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No. 10415

United States
Circuit Court of Appeals
For the Ninth Circuit.

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2364

CHARLES T. TAKAHASHI and EDWARD Y.
OSAWA,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington

Northern Division

FILED

NOV - 5 1943

PAUL P. O'BRIEN,
CLERK

No. 10415

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Circuit Court of Appeals
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Attorney for Appellee,
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Seattle, Washington [1*]

United States District Court Western District of
Washington Northern Division November
Term, 1941

No. 45646

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES T. TAKAHASHI, EDWARD Y.
OSAWA, M. IKUTA, KOH KOHNO, alias
Willie Chang, M. H. KIANG,

Defendants.

INDICTMENT

Vio. Section 88, Title 18, U. S. C. (Conspiracy to violate Paragraph 6 of the Executive Order approved by the President March 15, 1941, and effective April 15, 1941, pursuant to the provisions of Sec. 99, Title 50, U. S. C., and Sec. 80, Title 18, U. S. C.); Paragraph 6 of the Executive Order approved by the President March 15, 1941, and effective April 15, 1941, pursuant to the provisions of Section 99, Title 50, U. S. C.; Section 80, Title 18, U. S. C.

United States of America
Western District of Washington
Northern Division—ss:

The Grand Jurors of the United States of America being duly selected, impaneled, sworn and charged to inquire within and for the Northern

Division of the Western District of Washington,
upon their oaths present:

COUNT 1.

That Charles T. Takahashi, Edward Y. Osawa, M. Ikuta, Koh Kohno alias Willie Chang, and M. H. Kiang, whose true and full names are to the grand jurors unknown, and each of them, heretofore and within one year prior to the 2nd day of November and continuing to and including the 2nd day of November in the year of our Lord one thousand nine hundred and forty-one, then and there being, at Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, at Washington in the District of Columbia, at Tokyo in Japan, at Shanghai in [2] China and divers other places to the grand jurors unknown, did then and there knowingly, wilfully, unlawfully and feloniously combine, conspire and confederate and agree together and with each other, and with divers other persons to the grand jurors unknown, to commit divers offenses against the United States, to-wit, violations of Paragraph 6 of the Executive Order, prescribing regulations, approved by the President March 15, 1941, effective April 15, 1941, providing as follows:

“6. The country designated on the application for license as the country of destination shall in each case be the country of ultimate destination. If the goods to be exported are consigned to one country with the knowledge that they are intended

for transshipment thence to another country, the latter country shall be named as the country of destination."

pursuant to the provisions of Section 99, Title 50, U. S. C. in the following manner and particulars, it being then and there the plan, purpose and object of the said conspiracy and the object of the said persons so conspiring together as aforesaid, to knowingly, wilfully, unlawfully and feloniously export military equipment, munitions, component parts thereof, machinery, tools, materials and supplies necessary for the manufacture, servicing and operation thereof, prohibited by and curtailed by the Proclamation of the President of the United States, by virtue of Proclamations of the President dated July 2, 1940 and December 10, 1940, the Executive Order of the President of March 15, 1941, and Export Control Schedule No. 1 issued March 15, 1941, in that the object of said persons so conspiring together was to cause to be designated on an application for license for the export of three complete new steel dismantled storage tanks and accessories for erection purposes, a country as the country of designation, to-wit, China, other than the country of ultimate destination, to-wit, Japan, as they and each of them well [3] knew, and further, it being then and there the plan, purpose and object of the said conspiracy and the object of the said persons so conspiring together as aforesaid to violate the provisions of Section 80, Title 18, U.S.C., by knowingly, wilfully, unlawfully and feloniously making and *cause* to be made false and

fraudulent statements and representations in an application to export articles and materials (other than arms, ammunition, and implements of war and tin-plate scrap) designated by the President as necessary to the national defense pursuant to Section 6 of the Act of Congress approved July 2, 1940, then and there knowing said application contained false, fraudulent and fictitious representations and statements, being then and there a matter within the jurisdiction of a department and agency of the United States, to-wit, the Department of State, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the Grand Jurors upon their oath aforesaid, do further present that after the formation of the aforesaid conspiracy and in pursuance thereof and in order to effect the object of the aforesaid conspiracy and for the purpose of executing said unlawful conspiracy and agreement, the herein-after parties did certain overt acts, that is to say:

[4]

1.

That the defendants Charles T. Takahashi and Edward Y. Osawa on or about the month of December, 1940, at Seattle, Washington, ordered three complete new steel dismantled storage tanks and accessories for erection purposes.

2.

That on or about the months of November and December, 1940, the defendants Charles T. Taka-

hashi, Edward Y. Osawa, M. Ikuta and Koh Kohno at Seattle, Washington, and at Tokyo in Japan, agreed to furnish the Japanese army with three complete new steel dismantled storage tanks and accessories for erection purposes through Mikuni-Shoko Co., Ltd. of Tokyo, Japan

3.

That on or about the month of March, 1941, the defendant Edward Y. Osawa at Seattle, Washington departed on a vessel for Japan.

4.

That the defendant M. Ikuta of Mikuni-Shoko Co., Ltd. on or about June 27, 1941 at Tokyo in Japan sent a telegram in code addressed to C. T. Takahashi & Co., Seattle, under the individual proprietorship of Charles T. Takahashi.

5.

That on or about and between June 27, 1941 and November 2, 1941 at Seattle, Washington, the defendant Charles T. Takahashi received a confirmation of telegram from Mikuni-Shoko Co., Ltd., in code and translation, addressed to C. T. Takahashi & Co., Seattle, Washington, U.S.A.

6.

That the defendant M. Ikuta of Mikuni-Shoko Co., Ltd. on or about June 28, 1941, at Tokyo in Japan sent a telegram in code addressed to the defendant Charles T. Takahashi under [5] the code symbols N E W Y R, Seattle, Wash., U.S.A.

7.

That on or about and between June 28, 1941 and November 2, 1941, at Seattle, Washington, the defendant Charles T. Takahashi received a confirmation of telegram from Mikuni-Shoko Co., Ltd., in code and translation, addressed to N E W Y R.

8.

That on or about July 4, 1941, the defendant M. H. Kiang, as manager of Jua Hsin Company, at Shanghai in China, wrote a letter to China Import and Export Company, 212 5th Ave. So., Seattle, Washington, U.S.A.

9.

That the defendant M. Ikuta of Mikuni-Shoko Co., Ltd. on or about July 5, 1941, at Tokyo in Japan sent a telegram in code addressed to the defendant Charles T. Takahashi under the code symbols N E W Y R, Seattle, Wash., U.S.A.

10.

That on or about and between July 5, 1941 and November 2, 1941, at Seattle, Washington, the defendant Charles T. Takahashi received a confirmation of telegram from Mikuni-Shoko Co., Ltd., in code and translation, addressed to N E W Y R.

11.

That on or about July 5, 1941, the defendant Edward Y. Osawa at Tokyo wrote a letter addressed to the defendant Charles T. Takahashi at Seattle.

12.

That the defendant Charles T. Takahashi received a letter from Edward Y. Osawa, at Seattle, Washington, on or between the dates of July 5, 1941 and November 2, 1941. [6]

13.

That the defendant M. Ikuta of Mikuni-Shoko Co., Ltd. on or about July 8, 1941, at Tokyo in Japan sent a telegram in code addressed to the defendant Charles T. Takahashi under the code symbols N E W Y R, Seattle, Wash., U.S.A.

14.

That on or about and between July 8, 1941 and November 2, 1941, at Seattle, Washington, the defendant Charles T. Takahashi received a confirmation of telegram from Mikuni-Shoko Co., Ltd., in code and translation, addressed to N E W Y R.

15.

That the defendant Edward Y. Osawa on or about July 15, 1941, at Tokyo in Japan sent a letter to the defendant Charles T. Takahashi at Seattle, Washington.

16.

That the defendant Charles T. Takahashi received a letter from Edward Y. Osawa, at Seattle, Washington between the dates of July 15, 1941 and November 2, 1941.

17.

That the defendant M. Ikuta on or about July 16, 1941 at Tokyo in Japan, wrote a letter addressed to C. T. Takahashi Company, 212 5th Avenue South, Seattle, Wash., U.S.A.

18.

That the defendant Charles T. Takahashi at Seattle, Washington, between the dates of July 16, 1941 and November 2, 1941, received a letter from the defendant M. Ikuta of Mikuni Shoko Company Ltd., dated July 16, 1941.

19.

That on July 12, 1941, the defendant Edward Y. Osawa at Tokyo in Japan, wrote a letter to the defendant Charles T. Takahashi. [7]

20.

That the defendant Charles T. Takahashi at Seattle, Washington, between the dates of July 12, 1941 and November 2, 1941, received a letter from the defendant Edward Y. Osawa.

21.

That the defendant Charles T. Takahashi at Seattle, Washington, on or about July 16, 1941, prepared an application for license to export articles and materials (other than arms, ammunition and implements of war and tin-plate scrap) designated by the President as necessary to the national defense pursuant to Section 6 of the Act of Con-

gress approved July 2, 1940, a copy of said application for license is attached to this indictment marked Exhibit "A" and incorporated by this reference as a part of this overt act and this count as if fully set forth herein.

22.

That the defendant Edward Y. Osawa at Seattle, Washington, on or about November 2, 1941, had in his possession a letter from the defendant M. H. Kiang, as manager of Hua Hsin Company, Shanghai, China, dated July 4, 1941, addressed to Messrs. China Import and Export Company, 212 5th Ave. So., Seattle, Washington, U.S.A.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT II.

That Charles T. Takahashi, Edward Y. Osawa, M. Ikuta, Koh Kohno alias Willie Chang, and M. H. Kiang, whose true and full names are to the grand jurors unknown, and each of them, on or about the 16th day of July, 1941, in the [8] City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court. then and there being, did then and there knowingly, wilfully, unlawfully and feloniously violate the provisions of Paragraph 6 of the Executive Order, prescribing regulations,

approved by the President March 15, 1941, effective April 15, 1941, providing as follows; to-wit:

“6. The country designated on the application for license as the country of destination shall in each case be the country of ultimate destination. If the goods to be exported are consigned to one country with the knowledge that they are intended for transshipment thence to another country, the latter country shall be named as the country of destination.”

by virtue of Proclamations of the President dated July 2, 1940 and December 10, 1940, all pursuant to the provisions of Section 99, Title 50, U.S.C., in the following manner and particulars, to-wit, the aforesaid defendants and each of them in an application entitled:

“Application for license to export articles and materials (other than arms, ammunition, and implements of war and tin-plate scrap) designated by the President as necessary to the national defense pursuant to Section 6 of the Act of Congress approved July 2, 1940”

a copy of which said application is attached to this indictment marked Exhibit “A” and incorporated as a part of this count by this reference as if fully set forth herein. did designate on the application for license aforesaid for the export of three complete new steel dismantled storage tanks and accessories for erection purposes, a country as the country of designation, to-wit, China, other than the country of ultimate destination, to-wit, Japan.

as the defendants and each of them then and there well knew, contrary to the form of the statute and regulations in each such case made and provided, and against the peace and dignity of the United States of America. [9]

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT III.

That Charles T. Takahashi, Edward Y. Osawa, M. Ikutu, Koh Kohno alias Willie Chang, and M. H. Kiang, whose true and full names are to the grand jurors unknown, and each of them, on or about the 16th day of July, 1941, in the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there knowingly, wilfully, unlawfully and feloniously make and cause to be made false and fraudulent statements and representations in an application entitled:

“Application for license to export articles and materials (other than arms, ammunition, and implements of war and tin-plate scrap) designated by the President as necessary to the national defense pursuant to Section 6 of the Act of Congress approved July 2, 1940”

then and there knowing said application contained false, fraudulent and fictitious statements and representations being then and there in a matter within the jurisdiction of a department and agency of the

United States, to-wit, the Department of State, in the following manner and particulars, to-wit, the aforesaid defendants and each of them in an application entitled as aforesaid, a copy of which said application is attached to this indictment marked Exhibit "A" and incorporated as a part of this count by this reference as if fully set forth herein, did designate on the application for license aforesaid for the export of three complete new steel dismantled storage tanks and accessories for erection purposes, a country as the country of designation, to-wit, China, other than the country of ultimate destination, to-wit, Japan, as the defendants and each of them, then and [10] there well knew, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

(Signed) J. CHARLES DENNIS

United States Attorney

(Signed) GERALD SHUCKLIN

Assistant U. S. Attorney

[Endorsed]: A true bill, A. S. Nordquist, Foreman.

J. CHARLES DENNIS

Presented to the Court by the Foreman of the Grand Jury in open Court, in the presence of the Grand Jury, and Filed in the U. S. District Court Jan. 28, 1942

MILLARD P. THOMAS, Clerk

By J. MORTON ARNOLD, Deputy.

[11]

United States of America

Department of State

[Stamped]: Division of Control. Department of State. Jul 23, 4:30 p. m. '41.

[Stamped]: Division of Control. Department of State. Jul 22, 1941.

Application for license to export articles and materials (other than arms, ammunition, and implements of war and tin-plate scrap) designated by the President as necessary to the national defense pursuant to Section 6 of the Act of Congress approved July 2, 1940.

(Application to be made in duplicate)

DUPLICATE

.....

(Insert here name of country of destination)

License No.

(For official use only)

GENERAL INSTRUCTIONS

- (a) One duplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.

- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.
- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State,

or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

(1) Date of application July 16, 1941

(2) Applicant's reference No.....

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

(3) Name of applicant China Import & Export Company

By (Sgd) LEO NYE SING

(To be signed in ink)

(4) Consignee in foreign country

Name Hua Hsin Company

Address—Street 320 Szechuen Road

City Shanghai

Nationality—Chinese

State or Province.....

Country China

(5) Purchaser in foreign country

Name Hua Hsin Company

Address—Street 320 Szechun Road

City Shanghai

Nationality—Chinese

State or Province

Country China

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons	(7) Description of articles or materials to be exported	(8) Approximate net value
3	Complete New Steel Dismantled Storage Tanks and accessories for erection purposes	\$29,500.00 f.o.b. Seattle per tank
(each tank weighs about 270 long tons)		

APPLICATION REJECTED

Aug. 1, 1941 The Administrator of Export Control has determined that this proposed exportation would be contrary to the interest of the National Defense.

REJECTION NO. HT-26-R

(9) Source of material to be exported (see paragraph (e) above):

Graver Tank Company, (Name) East Chicago, Indiana (Address)

(10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:

Storage purposes

Hua Hsin Company, 320 Szechuen Road, Shanghai, China.

(11) License to be sent to

Name China Import & Export Company

Address: Street 212 Fifth Ave. So. City Seattle. State Washington.

- (12) Consignor in United States
Name China Import & Export Company. Nationality United States.
Address: Street 212 Fifth Ave. So. City, Seattle. State Washington.
- (13) Seller in United States
Name China Import & Export Company. Nationality United States.
Address: Street 212 Fifth Ave. So. City Seattle. State Washington.
Nature of business Importers & exporters.
- (14) Port of exit in the United States from which it is proposed to export the shipment Seattle, Wash.

License is hereby granted to the applicant mentioned herein to export from the United States of America to Shanghai, China the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

FOR COLLECTORS OF CUSTOMS AND
POSTMASTERS

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For the Secretary of State:

By

(For official use only) [12]

District Court of the United States
Western District of Washington
Northern Division

No. 45646

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES T. TAKAHASHI,
EDWARD Y. OSAWA,

Defendants.

VERDICT

We, the jury in the above-entitled cause, find the Defendant, Charles T. Takahashi is guilty as charged in Count I of the Indictment filed herein; is guilty as charged in Count II of the Indictment filed herein; is guilty as charged in Count III of the Indictment filed herein; and we further find the defendant, Edward Y. Osawa is guilty as charged in Count I of the Indictment filed herein; is guilty as charged in Count II of the Indictment filed herein; is guilty as charged in Count III of the Indictment filed herein.

DOUG. F. MAWER

Foreman

[Endorsed]: Filed Oct. 7, 1942. [88]

In the District Court of the United States for the
Western District of Washington Northern Di
vision.

No. 45646

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES T. TAKAHASHI, EDWARD Y.
OSAWA, et al..

Defendants.

JUDGMENT AND SENTENCE

Comes now on this 19th day of April, 1943, the said defendant Charles T. Takahashi into open Court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says, save as he before hath said.

Wherefore, by reason of the law and the premises, and the verdict of the jury finding the defendant guilty on Counts I, II and III of the indictment, it is

Considered, Ordered and Adjudged by the Court that the defendant Charles T. Takahashi is guilty as charged in Counts I, II and III of the indictment, and that he be committed on Count I of the Indictment to the custody of the Attorney General of the United States for imprisonment in such peni-

tentiary, or in such other like institution, as the Attorney General of the United States or his authorized representative may by law designate, for the period of two (2) years. It is further

Considered, Ordered and Adjudged by the Court that the said defendant Charles T. Takahashi on Count II of the indictment be committed to the custody of the Attorney General of the United States for imprisonment in such [95] penitentiary, or in such other like institution, as the Attorney General of the United States or his authorized representative may by law designate for the period of two (2) years; Provided, however, that the execution of the sentence on said Count II shall run concurrently with and not consecutively to the execution of the sentence imposed on Count I of the Indictment. It is further

Considered, Ordered and Adjudged by the Court that the said defendant Charles T. Takahashi on Count III of the Indictment be committed to the custody of the Attorney General of the United States for imprisonment in such penitentiary, or in such other like institution, as the Attorney General of the United States or his authorized representative may by law designate for the period of five (5) years; Provided, however, that the execution of the sentence on said Count III shall run concurrently with and not consecutively to the execution of the sentence imposed on Counts I and II of the Indictment.

And the said defendant is hereby remanded into the custody of the United States Marshal for this

District for delivery to the Warden, Superintendent or Keeper of such penitentiary, or such other like institution, as the Attorney General of the United States or his authorized representative may by law designate, for the purpose of executing said sentence. This judgment and sentence for all purposes shall take the place of a commitment, and be recognized by the Warden, Superintendent or Keeper of any Federal Penal Institution as such.

Done in open Court this 19th day of April, 1943.

LLOYD L. BLACK

United States District Judge

Presented by:

J. CHARLES DENNIS

United States Attorney

Violation: 18 USCA 88

[Endorsed]: Filed April 19, 1943. [96]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision

No. 45646

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES T. TAKAHASHI, EDWARD Y.
OSAWA, et al.,

Defendants.

JUDGMENT AND SENTENCE

Comes now on this 19th day of April, 1943, the said defendant Edward Y. Osawa into open Court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says, save as he before hath said.

Wherefore, by reason of the law and the premises, and the verdict of the jury finding the defendant guilty on Counts I, II and III of the indictment, it is

Considered, Ordered and Adjudged by the Court that the defendant Edward Y. Osawa is guilty as charged in counts I, II and III of the indictment, and that he be committed on Count I of the indictment to the custody of the Attorney General of the United States for imprisonment in such peniten-

tiary, or in such other like institution, as the Attorney General of the United States or his authorized representative may by law designate, for the period of two (2) years. It is further

Considered, Ordered and Adjudged by the Court that the said defendant Edward Y. Osawa on Count II of the Indictment be committed to the custody of the Attorney General [97] of the United States for imprisonment in such penitentiary, or in such other like institution, as the Attorney General of the United States or his authorized representative may by law designate for the period of Two (2) Years; provided, however, that the execution of the sentence on said Count II shall run concurrently with and not consecutively to the execution of the sentence imposed on Count I of the indictment. It is further

Considered, Ordered and Adjudged by the Court that the said defendant Edward Y. Osawa on Count III of the Indictment be committed to the custody of the Attorney General of the United States for imprisonment in such penitentiary, or in such other like institution, as the Attorney General of the United States or his authorized representative may by law designate for the period of five (5) years; provided, however, that the execution of the sentence on said Count III shall run concurrently with and not consecutively to the execution of the sentence imposed on Counts I and II of the indictment.

And the said defendant is hereby remanded into the custody of the United States Marshal for this District for delivery to the Warden, Superintendent or Keeper of such penitentiary, or such other

like institution, as the Attorney General of the United States or his authorized representative may by law designate, for the purpose of executing said sentence. This judgment and sentence for all purposes shall take the place of a commitment, and be recognized by the Warden, Superintendent or Keeper of any Federal Penal Institution as such.

Done in open Court this 19th day of April, 1943.

LLOYD L. BLACK

United States District Judge.

Presented by:

J. CHARLES DENNIS,

United States Attorney

Violation: 18 USCA 88

[Endorsed]: Filed April 19, 1943 [98]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant:

Charles T. Takahashi

Hunt, Idaho (W. R. A.)

Name and Address of Appellant's Attorney:

Samuel B. Bassett

811 Alaska Building

Seattle, Washington

Offense:

Conspiracy to violate Title 50 U. S. C., Section 99 and Title 18 U. S. C., Section 80; and for

violation of Title 50, U. S. C., Section 99 and Title 18, U. S. C. Section 80.

Date of Judgment: April 19, 1943.

Brief Description of Judgment or Sentence: Committed to the Attorney General of the United States for imprisonment five years under conspiracy indictment and two years each for violation of Title 50 U. S. C., Section 99 and Title 18 U. S. C. Section 80; sentences to run concurrently and not consecutively.

Name of Prison Where Now Confined, if not on Bail: On bail.

I, the above named appellant hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below.

CHARLES T. TAKAHASHI

Appellant

Dated April 19, 1943.

Copy rec'd April 19, 1943.

J. CHARLES DENNIS

U. S. Atty. [99]

GROUND OF APPEAL

I.

That the Court erred in refusing to suppress certain documents and evidence taken forcibly from the person of the defendants, and each of them, or or about November 2nd, 1941.

II.

That the Court erred in refusing to return to the defendants their private papers and documents forcibly and wrongfully seized by agents of the Government on or about the 2nd day of November, 1941.

III.

That the court erred in refusing to quash the indictment on the defendants' motion.

IV.

That the Court erred in overruling defendants' demurrer to the indictment, and each count thereof.

V.

That the Court erred during the trial of said cause in receiving certain documentary evidence consisting of private papers wrongfully taken from the person of the defendants, and each of them, on or about November 2nd, 1941.

VI.

That the Court erred in the trial of said cause in his comments and instruction to the jury during the progress of said trial and at the close of all of the evidence.

VII.

That the Court commented during said instruction making an argument favorable to the plaintiff and unfavorable to this defendant,—did not review the evidence fairly or impartially, to all of which this defendant duly excepted. [100]

VIII.

That the Court improperly instructed the jury to the prejudice of this defendant by improperly refusing to give instructions requested by said defendant, to all of which this defendant duly excepted on each ground.

IX.

That the Court improperly instructed the jury at the close of all of the evidence to the prejudice of this defendant, to which said defendant duly excepted.

X.

That the Court erred in overruling this defendant on his motion for a directed verdict after a challenge to the sufficiency of the evidence at the close of plaintiff's case.

XI.

That the Court erred in failing to direct the jury to grant a verdict for this defendant upon this defendant's motion at the close of all of the evidence.

XII.

That the verdicts rendered and accepted by the Court were not supported by any evidence in the case and are contrary to the evidence.

XIII.

That there was no material basic evidence in said cause to warrant submitting the cause to the jury and said cause was erroneously submitted to the jury on surmise, suspicion, speculation, presumption and inference on inference only.

XIV.

That the Court erred in refusing to grant this defendant's motion for a mistrial during the progress of the cause, to which this defendant duly excepted. [101]

XV.

That the Court erred on the voir dire examination of the jury, in that the Court denied this defendant's challenge for cause to two jurors.

XVI.

That the Court erred in denying the motion of this defendant for new trial and in arrest of judgment.

XVII.

That the Court erred in resentencing this defendant after the original sentence was duly imposed.

[Endorsed]: Filed April 19, 1943. [102]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant:

Edward Y. Osawa,
Hunt, Idaho (W. R. A.)

Name and Address of Appellant's Attorney.

Tracy E. Griffin
1107 American Bldg.,
Seattle, Washington

Offense: Conspiracy to violate Title 50 U. S. C.,
Section 99 and Title 18 U. S. C., Section 80;

and for violation of Title 50, U. S. C., Section 99 and Title 18 U. S. C., Section 80.

Date of Judgment: April 19, 1943.

Brief Description of Judgment or Sentence: Committed to the Attorney General of the United States for imprisonment five years under conspiracy indictment and two years each for violation of Title 50 U. S. C., Section 99 and Title 18 U. S. C. Section 80; sentences to run concurrently and not consecutively.

Name of Prison Where Now Confined, If Not on Bail: On bail.

I, the above named appellant hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below.

EDWARD Y. OSAWA

Appellant

Dated April 19, 1943.

Copy rec'd April 19, 1943

J. CHARLES DENNIS

U. S. Atty. [103]

GROUND'S OF APPEAL

I.

That the court erred in refusing to suppress certain documents and evidence taken forcibly from the person of the defendants, and each of them, on or about November 2nd, 1941.

II.

That the Court erred in refusing to return to the defendants their private papers and documents forcibly and wrongfully seized by agents of the Government on or about the 2nd day of November, 1941.

III.

That the court erred in refusing to quash the indictment on the defendants' motion.

IV.

That the Court erred in overruling defendants' demurrer to the indictment, and each count thereof.

V.

That the Court erred during the trial of said cause in receiving certain documentary evidence consisting of private papers wrongfully taken from the person of the defendants, and each of them, on or about November 2nd, 1941.

VI.

That the Court erred in the trial of said cause in his comments and instruction to the jury during the progress of said trial and at the close of all of the evidence.

VII.

That the Court commented during said instruction making an argument favorable to the plaintiff and unfavorable to this defendant,—did not review the evidence fairly or impartially, to all of which this defendant duly excepted. [104]

VIII.

That the Court improperly intructed the jury to the prejudice of this defendant by improperly refusing to give instructions requested by said defendant, to all of which this defendant duly excepted on each ground.

IX.

That the Court improperly instructed the jury at the close of all the evidence to the prejudice of this defendant, to which said defendant duly excepted.

X.

That the Court erred in overruling this defendant on his motion for a directed verdict after a challenge to the sufficiency of the evidence at the close of plaintiff's case.

XI.

That the Court erred in failing to direct the jury to grant a verdict for this defendant upon this defendant's motion at the close of all of the evidence.

XII.

That the verdicts rendered and accepted by the Court were not supported by any evidence in the case and are contrary to the evidence.

XIII.

That there was no material basic evidence in said cause to warrant submitting the cause to the jury and said cause was erroneously submitted to the jury on surmise, suspicion, speculation, presumption and inference on inference only.

XIV.

That the Court erred in refusing to grant this defendant's motion for a mistrial during the progress of the cause, to which this defendant duly excepted. [105]

XV.

That the Court erred on the voir dire examination of the jury, in that the Court denied this defendant's challenge for cause to two jurors.

XVI.

That the Court erred in denying the motion of this defendant for new trial and in arrest of judgment.

XVII.

That the Court erred in resentencing this defendant after the original sentence was duly imposed.

[Endorsed): Filed April 19, 1943. [106]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON
APPEAL

I, Judson W. Shorett, Clerk of the United States District Court for the *Western of* Washington, do hereby certify that the foregoing typewritten transcript of record, consisting of pages numbered from 1 to 112, inclusive, is a full, true and complete copy of so much of the record, papers and

other proceedings in the above and foregoing entitled cause, as is required by amended stipulation re designation of contents of record on appeal filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the same constitute the record on appeal herein from the judgments of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that I transmit herewith as part of the record on appeal in this cause the original Bill of Exceptions and Assignments of Error filed in the cause.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellants for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

Clerk's fee's (Act of Feb 11, 1925) for making record, certificate or return,

105 folios at 15c.....	15.75
164 folios at 5c.....	8.20
Appeal fee	10.00
Certificate of Clerk to Transcript50
Certificate of Clerk to Original Exhibits50
	<hr/>
Total	\$34.95

I hereby certify that the above amount has been paid to me by the attorneys for the appellants.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 9 day of September, 1943.

[Seal]

JUDSON W. SHORETT,

Clerk of the United States
District Court for the West-
ern District of Washington

By TRUMAN EGGER,
Chief Deputy

[Title of District Court and Cause.]

ASSIGNMENT OR ERRORS

The defendants, Charles T. Takahashi and Edward Y. Osawa, and each of them, hereby assign the following errors on appeal:

I.

The Court erred in denying the petition of Charles T. Takahashi for the return of private papers forcibly taken from his person, in violation of his rights under the Fourth and Fifth Amendments to the Constitution of the United States.

II.

The Court erred in denying the petition of Edward Y. Osawa for the return of private papers forcibly taken from his person, in violation of

his rights under the Fourth and Fifth Amendments to the Constitution of the United States.

III.

The Court erred in denying the motion of defendants, Charles T. Takahashi and Edward Y. Osawa, to quash the indictment herein.

IV.

The Court erred, during the trial of said cause, in refusing to suppress and in admitting in evidence private papers and letters forcibly taken from the person of the defendant, Charles T. Takahashi, on or about November 2, 1941, in violation of his rights under the Fourth and Fifth Amendments to the Constitution of the United States.

V.

The Court erred, during the trial of said cause, in refusing to suppress and in admitting in evidence private papers and letters forcibly taken from the person of the defendant, Edward Y. Osawa, on or about November 2, 1941, in violation of his rights under the Fourth and Fifth Amendments to the Constitution of the United States.

VI.

The Court erred in denying the motion made on behalf of the defendants, and each of them, to dismiss the indictment at the end of the Government's case, on the ground that the evidence was insufficient, as a matter of law, to sustain any count in the indictment.

VII.

The Court erred in denying the motion made by the defendants, and each of them, at the close of all the evidence to dismiss the indictment and for a direction of verdict of not guilty on each and every count of the indictment.

VIII.

The Court erred in instructing the jury, because the following portions of the charge exceeded the bounds of fair comment and was highly prejudicial in that it was a biased, unfair and one-sided analysis of the evidence and was argumentative:

“In this case it is my recollection that Mr. Osawa testified that while he was in Tokio, Japan, exhibit 9,—which he says he brought with him from Tokio, Japan, to Seattle on November 2nd—was handed to him by someone, from Mikuni-Shoko Company Limited of Tokio, Japan. He says that he received that letter, as I remember it. That letter recites from the beginning, quote,—it is addressed to “Messrs. China Import and Export Company. As a consequence of our long business discussion with your representative, Mr. W. L. Chang, we wish——”. Now, in the light of all of the evidence of this case, if you believe that Mr. Osawa honestly believed that Mr. W. L. Chang was the business representative of the China Import and Export Company; in the light of all of the evidence that you have heard, do you believe that Mr. Osawa believed the statement in the last of that letter that the tanks were imported for local storage purposes in Shanghai?

In connection with that letter and in connection with all of the evidence in the case, if Mr. Osawa believed that the letter of July 4, 1941, signed by Hua Hsin Company was an honest order for the shipment of these tanks to Shanghai, do you reasonably think that he would have written on July 15 to Mr. Takahashi to this effect: "We sure are on a spot on the three tanks. I doubt if a day goes by that they don't call us or say something about them. If we could only get those three tanks out it would be a life saver and they would do almost anything for us."

And you are entitled in the light of your experience and your common sense to determine if Mr. Osawa honestly believed that the Hua Hsin Company was purchasing these tanks, if he wouldn't have made a statement in this communication to Mr. Takahashi to the effect that he was not willing to approve the credit account of \$71,700 claimed in the Hua Hsin Company.

And you have a right in the light of all of the testimony to determine whether or not Mr. Osawa thought any portion of that letter of July 14, 1941, was an honest letter.

As I remember the testimony, Mr. Osawa testified that while this plaintiff's exhibit 9 was brought to him by someone from the Miconi Shoko Company, that he never saw either of the letters—I would like to find exhibit 17—dated July 16, 1941, addressed by Miconi Shoko Company Limited of Tokio, Japan, also to Seattle, Washington, but to the name Takahashi, instead of Chinese Import Company.

In the light of all of the evidence that you have heard in this case and of the exhibits, do you believe that if the Mikuni-Shoko Company would take to Mr. Osawa this exhibit 9, instead of mailing it to the China Import Company at Seattle, that they wouldn't also take to Mr. Osawa exhibits 17 and 18? If you read exhibits 17 and 18, as I know you will, it will be for you to determine whether or not those two letters do not show that it was the plan of the Mikuni-Shoko Company Limited or of Mr. Ikuta, its director, to merely use the Hua Hsin Company as a pretense.

It will be for you to determine if the Mikuni-Shoko Company wished Mr. Osawa to have the one letter, why they wouldn't want him to have the other two letters.

It is also for you to consider in the evidence—I would like to see the telegraph exhibits 10 to 13, inclusive—it is also for you to consider, in the light of all of the evidence, whether a business man of the experience of Mr. Takahashi, receiving these telegrams, under date of June 27 in code duo and private, under date of June 28th in code duo, and under date of July 5th under code duo, code inverted and under date of July 8, 1941, under code duo, without realizing what the purpose of Mikuni-Shoko Company was, as you find from the evidence in the light of exhibits 17 and 18.

Do you think it is reasonable that if a man with the experience of Mr. Takahashi, under date of June 27th, received a telegram from a company in Tokio, which included this language, "Do utmost

to arrange earliest possible shipment by every possible means oil tanks and tubes. Our customers desire additional oil tanks. Telegraph prospect." And if on or about the next date, by a telegram from the same Tokio Company, dated June 28, 1941, he was advised as follows: "Decided today name of firm is Hua Hsin Company, address 320 Szechuen Road, Shanghai, China," whether or not he would think that that was an honest sale to the Hua Hsin Company in Shanghai, China, or whether those telegrams would give any possible inference except that Mr. Takahashi was advised that the Mikuni-Shoko Company was telling him that they had decided to use the name of Hua Hsin Company?

In the light of your experience, do you think that if this was an honest sale that the Mikuni-Shoko Company would not have used the words, "Tanks have been sold to the Hua Hsin Company" instead of telegraphing Mr. Takahashi, "Decided today name of firm is Hua Hsin Company" and the other language set forth in this telegram?

My recollection of the evidence in this case is that Mr. Takahashi admitted that he had these four telegrams before he handed Mr. Leo Nye Sing the application of July 16, 1941. From the light of your experience and from the light of what Mr. Leo Nye Sing did in connection with this transaction with Hua Hsin Company, do you think that if Mr. Takahashi had deemed that that transaction was honest, that he would have agreed to pay three percent of any percent for someone to sign his name?

It is for you to determine in the light of your experience whether, if Mr. Takahashi was endeavoring to sell these three tanks other than in the Orient at time when he understood he would be unable to ship them to the Orient, if that were any different than anyone would do; whether they were honest or dishonest, if they were not able to have tanks shipped to the Orient, when they had been ordered from that location.

Under the evidence, as I remember it, the Mexico transaction, as far as the contract is concerned, involved used plates, used steel plates.

Under the evidence, as I remember it, the Mexico company executed an affidavit before a Mexican notary public and someone as a vice consul signed a certificate to the effect that such Mexican notary public was a notary public. It is for you to determine in the light of all of the evidence whether actually that affidavit was true.

That evidence has been introduced by the defendants upon the ground that it shows such good faith on the part of the defendants that they wouldn't be willing to violate any other law in the light of their action in that connection. You have a right in connection with the Mexican transaction to read and consider what Mr. Takahashi wrote as to the Mexican situation.

It is also for you to determine whether or not the Mexican transaction shows such good faith that anyone acting as Mr. Takahashi did would not violate any other law or whether it shows, or whether you may reasonably infer that it shows that when

the blacklisted firm was unable to receive any more steel plates, for whatever purpose it wished to receive them, that Mr. Takahashi cancelled the contract after it had been suspended by the Mexico Company.

In testing the evidence of the case, you have a right and should consider all of the statements and all of the exhibits 19, and 21 and 29, relative to these tanks. You have a right to determine whether the defendant Takahashi or the defendant Osawa was honest in stating the specific purpose of the article and the address of the ultimate consumer in a foreign country.

In the light of all of the evidence, do you believe that in exhibit 21, the application of July 16, 1941, that Mr. Takahashi believed that the specific purpose and the address of the ultimate consumer for storage purposes was Hua Hsin Company, Shanghai, China?

With respect to exhibit 19, the application of April 16, 1941, it is for you to determine whether or not it was honestly believed by Mr. Takahashi the purpose of the articles and the name of the ultimate consumer for storage purposes by Miconi Shoko Company. In that connection you may consider that in exhibit 20 signed by Mr. Leo Nye Sing it was stated that the consignee was [Illegible] Company, Mukden, China. And that the purpose was to be used on horse-drawn cooley wagons and carts, \$25,000, 50,000 pieces of automobile roller bearings.

The Kono and Company as the "ultimate con-

sumer to be sold to the trade as above explained". In the light of that statement that these articles were to be sold to the trade as above explained, it is for you to determine whether or not the defendant Takahashi was frank and open with the Government in not stating, instead of the purpose of the ultimate consumer being storage purposes by Miconi Shiko Company—for sale by Miconi Shoko Company to the Japanese Army or Navy."

At the trial of the defendants, and each of them, objected to the foregoing instructions on the following grounds and took the following exceptions:

Mr. Griffin (Counsel for defendant Osawa) accepted on the following grounds:

The Court then advised the jury, in effect, that he was permitted to comment upon the evidence, and the Court did comment upon the evidence, but the comment of the Court, to which the defendant Osawa excepts, was not unbiased, was not fair, was not met by the Court with any favorable comment of any kind in behalf of the defendant Osawa, but the comment was unfair, biased, prejudicial, without any endeavor at all to equalize the force of the comment, but made directly and with emphasis for the purpose of advising the jury that the Court, irrespective of what the Court said in the general instruction, that they should take nothing from it, to advise the jury that the Court desired a verdict of guilty in this case. Considering the comment made by the Court upon the evidence, an exception is taken to each and every comment made by the Court in that particular. I desire to point out that

having so commented, the defendants were entitled to have an equal fair comment in so far as their rights were concerned, to suggest to the Court this: While the Court by its comment has sought a conviction, because the defendants are charged with desiring to tranship three tanks, from Shanghai, China, to Japan, the jury were entitled to be told that they also should consider this—there is no evidence in the case that Japan required these three tanks in Japan. The evidence is that at the time in question Japan controlled not only the port of Shanghai but all the ports of China. The evidence is with that situation existing, the United States government denied the application, that the jury has an absolute right to infer, even if the shipments were direct to the Japanese Army, that those storage tanks might be and would be as useful in Shanghai, China, where its armies were employed, as it would be to ship them to Japan and transport oil from Japan, 1500 miles to Shanghai.

The Court: It is understood and the Court rules that each exception taken by Mr. Griffin on behalf of Mr. Osawa shall be deemed taken by Mr. Bassett in behalf of Mr. Takahashi.

Mr. Bassett (Counsel for defendant Takahashi): Thank you. In addition to what counsel has said in taking an exception to the Court's commenting on the evidence, I wish to add that the comments were not only biased and prejudicial and unfair, and one-sided, but they were argumentative as well.

The Court: I imagine that you would like all of the exceptions which Mr. Bassett has taken?

Mr. Griffin: Yes. I was just going to suggest that would round it out, then.

The Court: You may.

IX.

The Court erred in instructing the jury as follows, concerning evidence of defendants' good character and reputation:

“There has been evidence introduced in this case as to the good reputation,—that is, what people say as to the honesty or integrity of the defendants,—and you shall give such testimony that weight as you believe it entitled to receive in determining whether or not the defendants are guilty as charged. But the jury will recognize that many men have born good reputations, sometimes over many years, and have later been convicted of an offense which has existed for the same many years during which everyone thought they had a good reputation. And in this case, if you are convinced beyond a reasonable doubt that the defendants, or either of them, by the evidence, are guilty of the three counts or any of them, it is your duty and obligation to find said defendants or such one guilty, regardless of how good their reputation may have been”.

At the trial the defendants, and each of them, objected to the foregoing instruction on the following grounds and took the following exceptions:

Mr. Griffin (Counsel for defendant Osawa): The Court said further and, by his instructions, wiped

out all of the law of good reputation and honor, so far as the defendants are concerned, by his instruction that the jury could consider the reputation for what it is worth, but—as the jury knows, said the Court—people with good reputations are guilty and in this case so and so and so and so.

The Court: It is understood and the Court rules that each exception taken by Mr. Griffin on behalf of Mr. Osawa shall be deemed taken by Mr. Bassett in behalf of Mr. Takahashi.

Mr. Bassett: Thank you.

The Court: I am going to give some additional instructions, in the light of the exceptions you have taken, and if you wish, it may be understood you will have the right of exception to each one without the necessity of expressly taking them.

Whereupon the Court further instructed the jury concerning evidence of defendants' good character and reputation as follows:

“Members of the jury, supplementing the instructions on the law, that you must accept as the law, I wish to say this to you: In addition to what I have said with respect to the testimony in the case regarding the reputation of the defendants or either of them, the jury are instructed that if, in the light of all of the testimony and in the light of the reputation testimony, they believe the defendants or either of them are not guilty, they have a right to base that verdict upon their interpretation of the testimony, together with reputation testi-

mony, if in the jury's opinion such satisfies them that the defendants are not guilty."

The Court: Do you wish to note any exceptions—though I have in mind what has been said—do you wish to except to each and everything that I have said to the jury at this time?

Mr. Griffin: I so understood.

Mr. Bassett: Yes.

Mr. Crandell: Yes.

X.

The Court erred in overruling the motion of the defendants, Charles T. Takahashi and Edward Y. Osawa, for a new trial and in arrest of judgment, based upon the foregoing assignments of error.

XI.

The Court erred in entering judgment of conviction against the defendant, Charles T. Takahashi, and in sentencing him.

XII.

The Court erred in entering judgment of conviction against the defendant, Edward Y. Osawa, and in sentencing him.

By reason of the foregoing manifest errors the defendants, and each of them, pray that the judg-

ments of conviction be set aside and that they be discharged from custody.

TRACY E. GRIFFIN

SAMUEL B. BASSETT

Attorneys for Defendants,

Charles T. Takahashi and

Edward Y. Osawa.

Received a copy of the within Assignment of Errors this 13 day of Aug. 1943.

J. CHARLES DENNIS

Attorney for U. S.

[Endorsed]: Filed Aug. 13, 1943.

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

Be It Remembered that after return of the indictment herein, and a long time before trial, the defendant Charles T. Takahashi, on the 27th day of April, 1942, served and filed in the above entitled cause his duly verified petition for the return of certain private papers, books, money and other property forcibly taken by Federal agents from his person and from his office in violation of his rights under the Fourth and Fifth Amendments to the Constitution of the United States. Copy of said petition follows:

[Title of District Court and Cause.]

Comes now the defendant, Charles T. Takahashi, and respectfully represents to the Court:

I.

That at all of the times herein *alleged* he was and now is a citizen of the United States and a citizen and resident of the State of Washington and the City of Seattle.

II.

That on or about the 2nd day of November, 1941, certain officers of the United States Government, whose true names are to the petitioner unknown, without cause or reason therefor, in Seattle, Washington, restrained your petitioner, [1*] forcibly took from the person of your petitioner certain papers, including letters, telegrams, certificates, memoranda and money, without having a search warrant or without any authority in law, in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

III.

That upon demand for return of said papers, including letters, telegrams, certificates, memoranda and certain money, said officers returned to petitioner a certain certificate and the money so unlawfully seized, but refused and still refuse to return to petitioner said letters, telegrams, papers and memoranda. That the said letters, telegrams, papers and memoranda consist of the following, to-wit:

*Page numbering appearing at foot of page of original Bill of Exceptions.

1. Telegram in code transmitted by M. Ikuta of Mikuni-Shoko Co., Ltd., on or about June 27, 1941 at Tokyo in Japan, addressed to C. T. Takahashi & Co., Seattle, Washington, being the property of C. T. Takahashi.

2. A letter dated July 5, 1941, addressed to Edward Y. Osawa at Tokyo, Japan, and addressed to your petitioner.

3. Letter from Mikuni-Shoko Co., Ltd., in confirmation of telegram, addressed to N E W Y R.

4. Letter written by Edward Y. Osawa, dated July 15, 1941, at Tokyo, Japan, sent to Charles T. Takahashi, petitioner.

5. Letter dated July 16, 1941, written by M. Ikuta, Tokyo, Japan, written to C. T. Takahashi & Co.

6. Letter dated July 12, 1941, written by Edward Y. Osawa, Tokyo, Japan, and addressed to petitioner, C. T. Takahashi.

IV.

That there is now overdue an income tax report to the [2] Federal Government for petitioner's income for 1941, but that the plaintiff above named, by its officers, have possession of all of the records and books of petitioner, and have in their possession all of his funds and money, and petitioner has no record or means of compiling his income report, which under the laws of the United States will constitute a penalty.

V.

That all of said papers are the personal property of your petitioner. That in violation of the Fourth and Fifth Amendments to the Constitution of the United States, and in violation of petitioner's rights, the said papers, letters and telegrams so unlawfully possessed by the said representatives *if* the Government, were delivered to the United States Attorney for the above entitled district, and by said United States Attorney wrongfully and unlawfully presented to the Grand Jury and used.

VI.

That to wit, on or about the 3rd day of November, 1941, and thereafter up to and including December 7, 1942, certain officers of the United States Government, whose names are unknown to petitioner, but are known to the above named plaintiff, wrongfully and unlawfully, and without search warrant, and without authority therefor, took possession of and searched petitioner's office at 212 5th Avenue South, Seattle, Washington, and wrongfully and unlawfully, and in violation of the Constitution of the United States and especially of the Fourth and Fifth Amendments thereof, took possession of the papers, documents, books, records, and all of the property belonging to petitioner in said office. [3]

VII.

That on said 3rd day of November, 1941, without authority therefor, said officers of the United States Government, whose names are unknown to the peti-

tioner, but known to the plaintiff in the above entitled action, took possession of the plaintiff's property, consisting of apartment houses, places of business, and together with certain cash on deposit in the National Bank of Commerce, the property of petitioner, and continue to hold said property in violation of petitioner's rights, and that said officers and the Deputy United States District Attorney purposes to use said letters, books, records, telegrams, papers and documents at the trial of the above entitled cause, and by reason thereof and the facts set forth above, petitioner's rights guaranteed under the said Fourth and Fifth Amendments to the Constitution of the United States have been and will be violated unless the court order the return of said property.

Wherefore, petitioner prays that said District Attorney, and said Government officials be required to forthwith return all of said property, including said letters, telegrams, papers, documents, books, records and money to the said defendant, and your petitioner will ever pray.

C. T. TAKAHASHI

Petitioner

SAMUEL B. BASSETT

GEO. H. CRANDELL

Attorneys for Petitioner

(Verification)

On the same day, April 27, 1942, the defendant Edward Y. Osawa served and filed a similar petition

for the return of a certain briefcase and certain private papers forcibly taken by Federal agents from his person, in violation of his rights under the Fourth and Fifth Amendments to the Constitution of the [4] United States. A copy of said petition follows:

[Title of District Court and Cause.]

Comes now the defendant, Edward Y. Osawa, and respectfully represents to the court:

I.

That at all of the times herein alleged he was and now is a citizen of the United States and a citizen and resident of the State of Washington and the City of Seattle.

II.

That on or about the 2nd day of¹ November, 1941, certain officers of the United States Government, whose true names are to petitioner unknown, without cause or reason therefor, in Seattle, Washington, restrained your petitioner, forcibly took from the person of your petitioner one brief case and papers, without having a search warrant, or without any authority in law, in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

III.

That upon demand for the return of said papers and brief case said officers refused and still refuse to return to petitioner said papers and brief case.

IV.

That all of said papers and said brief case are the personal property of your petitioner. That in violation of the Fourth and Fifth Amendments to the Constitution of the United States, and in violation of petitioner's rights, said papers and brief case so unlawfully possessed by the said representatives of the Government, were delivered to the United States Attorney for the above entitled district, and by said United States Attorney wrongfully and unlawfully presented to the Grand Jury and used. [5]

Wherefore, petitioner prays that said District Attorney, and said Government officials be required to forthwith return said papers and brief case to petitioner, and your petitioner will ever pray.

EDWARD Y. OSAWA

Petitioner

SAMUEL B. BASSETT

GEO. H. CRANDELL

Attorneys for Petitioner.

(Verification)

And on the same day, April 27, 1942, both of said defendants joined in a motion to quash the indictment herein upon the ground and for the reason that the private papers and property so taken had been submitted by the United States District Attorney to the Grand Jury and had become the basis for the indictment. A copy of said motion follows:

[Title of District Court and Cause.]

Come now the above named defendants, Charles T. Takahashi and Edward Y. Osawa, and move the court on the files and records herein, and on the affidavit of Geo. H. Crandell hereto attached, and the petitions of the defendants, for an order quashing the indictment herein, and both counts thereof, upon the ground and for the reason that the United States District Attorney and his assistants, submitted to the Grand Jury which returned said indictment a large number of records, memoranda, letters, telegrams unlawfully seized from the person of Charles T. Takahashi and Edward Y. Osawa, and from the office of Charles T. Takahashi, and that the evidence so obtained and submitted to the Grand Jury, as aforesaid, became the basis for the indictment herein, and both counts thereof, without which the United States District Attorney cannot successfully prosecute the same. That all of said matters have been done in [6] violation of the defendants' rights under the Fourth and Fifth Amendments to the Constitution of the United States; and that the Government ought not to be subjected to further discredit and expense, nor the defendants subjected to further expense, vexation and contumely by the prosecution of a bill of indictment so founded.

SAMUEL B. BASSETT

GEO. H. CRANDELL

Attorneys for Defendant

This motion to quash was supported by affidavit as follows:

[Title of District Court and Cause.]

United States of America

Western District of Washington

Northern Division—ss.

Geo. H. Crandell, being first duly sworn on oath deposes and says: That he is one of the attorneys for the defendants, Charles T. Takahashi and Edward Y. Osawa, and makes this affidavit in support of a motion to quash the indictment herein. Affiant says that on to wit, the 2nd day of November, 1941, in the City of Seattle, that certain officers of the Treasury Department of the United States known to the plaintiff and unknown to said defendants, wrongfully and unlawfully arrested and restrained the defendants, Charles T. Takahashi and Edward Y. Osawa, and each of them, and while so restrained and under arrest, wrongfully and unlawfully took from said defendants certain papers and documents, which said papers and documents were used by the United States Attorney before the Grand Jury, and by the use of which the indictment herein was returned. That thereafter, without authority, on to wit, the 3rd day of November, 1941, the said officers of the Treasury Department of the United States, whose true names are known to the plaintiff but unknown to the defendant, unlawfully [7] and without authority, took possession of the offices of the defendant, Charles T. Takahashi, searched the same and unlawfully procured papers, documents and records in violation of the Fourth and Fifth Amendments to the Constitution of the United States and

the rights of the defendants herein. That said documents and papers were used by the United States Attorney and his assistants to procure the indictment herein.

GEO. H. CRANDELL

Subscribed and sworn to before me this 27th day of April, 1942.

KENNETH DURHAM

Notary Public in and for the State of Washington,
residing at Seattle

In resistance to these petitions for return of private papers and motion to quash the plaintiff, on the 2nd day of May, 1942, served and filed six affidavits (stapled together and filed as one document), the same being the affidavits of A. S. Atherton, A. D. Richards, J. W. Stanton, A. J. Frankel, A. H. Koons and Roy L. Ballinger. The affidavit of A. S. Atherton reads as follows:

[Title of District Court and Cause.]

United States of America
Western District of Wash.
Northern Division—ss.

A. S. Atherton, being first duly sworn, on oath deposes and says:

That he is a United States Customs Agent stationed at Seattle, Washington, and was such officer at all times during the year 1941 and at all times since;

That on or about October 15, 1941, he received an instruction from the Bureau of Customs to investi-

gate C. T. [8] Takahashi as a suspected violator of the Foreign Funds Control Act;

That together with Customs Agent A. D. Richards he commenced this investigation in the latter part of the month of October, 1941;

That on November 2, 1941, he was at the Great Northern Dock in Seattle, Western District of Washington, Northern Division, and at that time the Japanese M/S Hikawa Maru was there, having arrived at that place from Japan that date;

That he saw Edward Y. Osawa, who had just arrived from Japan on that vessel, in the Customs baggage enclosure on that dock;

That he did not know Osawa but the latter was pointed out to him by another officer who described him as C. T. Takahashi's manager;

That he then saw another man talking to Osawa in the Customs baggage enclosure who was pointed out to him by another officer as C. T. Takahashi;

That he knew by reference to the passenger list of the above-named vessel, that C. T. Takahashi was not a passenger arriving thereon, and, by his knowledge of the rule that only arriving passengers were allowed in the Customs enclosure, that C. T. Takahashi had no right to be therein;

That he saw Edward Y. Osawa holding a paper in his hand, but could not see, owing to the piles of baggage and the crowd of people moving about, whether C. T. Takahashi gave the paper to Edward Y. Osawa;

That Customs Agent A. D. Richards showed him a letter with the statement that he had, that date, received the [9] letter from the hands of Chief Customs Inspector A. H. Koons, and this letter, a photostat of which, marked "Exhibit A", is attached to this affidavit and made a part thereof, was in an envelope addressed, "Miss Chisato Koitabashi, c/o Mr. Ed Osawa", and noted from a reading of the letter, which was dated October 19, 1941, that the writer thereof was sending merchandise to the addressee through Ed Osawa and appeared to express a fear of detection although chancing the outcome of the effort to send merchandise into the United States past the Customs, and describing the merchandise and stating its value;

That this circumstance, together with that of a close contact of Edward Y. Osawa by C. T. Takahashi, and the fact that the said Takahashi had been ascertained not to have been a passenger arriving on that ship, led to the belief that a plan was afoot in his presence to violate the laws of the United States and that C. T. Takahashi was as liable to suspicion in connection therewith as was Edward Y. Osawa who was specially named;

That upon ascertaining that Edward Y. Osawa desired that this baggage be removed to the United States Appraiser's Store for examination at a later date, he observed Osawa and C. T. Takahashi together start to leave the Customs baggage enclosure, at which time, with Customs Agent A. D. Richards, he introduced himself to Osawa and Takahashi as a United States Customs Agent, exhibited to them the

badge of such agent, and directed them to enter the adjoining waiting room for search;

That with Customs Agent Richards he searched Edward Y. Osawa in the wash room adjoining the waiting room, and took from him a brief case containing various papers, including one letter on the letterhead of the Hua Hsin Company, dated at Shanghai, July 4, 1941, addressed to the China Import and Export Company, 212 Fifth Avenue South, Seattle, Washington and signed for the Hua Hsin Company by M. H. Kiang, manager;

That said letter contained a reference to the sum of \$71,700.00, described therein as a deduction to be made by the China Import and Export Company from the Hua Hsin Company's credit account, and knowing that the China Import and Export Company was but another name for C. T. Takahashi, whom he had under investigation as a suspected violator of the Foreign Funds Control Act, he took and held that letter from Takahashi's employee, Edward Y. Osawa, as an instrumentality of the crime of violating the Foreign Funds Control Act, and held the other papers as having a bearing on and contributing to the transaction described in the above-mentioned Hua Hsin letter.

That he then, together with Customs Agent A. D. Richards, searched the person of C. T. Takahashi in the washroom adjoining the waiting room on the Great Northern Dock, and removed from his person:

1. Telegram in code transmitted by Mikuni-Shoko Company, Ltd., on or about June 27, 1941, at

Tokyo, Japan, addressed to C. T. Takahashi and Company, Seattle, Washington.

2. Letter dated July 5, 1941, addressed by Edward Y. Osawa, at Tokyo, Japan, to C. T. Takahashi.

3. Letter from Mikuni-Shoko Company, Ltd., in confirmation of telegram addressed to NEWYR.

4. Letter written by Edward Y. Osawa, dated July 15, 1931, at Tokyo, Japan, and sent to Charles T. Takahashi. [11]

5. A letter dated July 16, 1941, written by M. Ikuta, Tokyo, Japan, to C. T. Takahashi and Company.

6. Letter dated July 12, 1941, written by Edward Y. Osawa, Tokyo, Japan, and addressed to C. T. Takahashi, together with other papers, all of which related to the matter of steel storage tanks to be shipped to the Hua Hsin Company, and the payment for which was the \$71,700.00 under investigation as foreign funds of China or Japan and Nationals thereof;

In addition he took from C. T. Takahashi U. S. Customs pass or permit No. 1075 which permitted C. T. Takahashi to board vessels, after Customs boarding, but specifically denied him entrance to the Customs enclosure;

That on November 3, 1941, at 212 Fifth Avenue So., Seattle Washington, which is the place of business of C. T. Takahashi, and of the China Import and Export Company, he received from C. T. Takahashi several rejected applications for licenses to

export articles and materials designated by the President as necessary to the national defense pursuant to Section 6 of the Act of Congress approved July 2, 1940;

That these rejected applications were freely offered by C. T. Takahashi with the consent of his attorney at law who was then and there present and not by reason of any search, seizure or unlawful action;

That neither on November 3, 1941, December 7, 1941, nor at any other time did he take possession of the property of C. T. Takahashi consisting of apartment houses, places of business, cash bank deposits or anything else.

A. S. ATHERTON

Subscribed and sworn to before me this 1 day of May, 1942, [12] at Seattle, Washington

E. M. ROSSER

Deputy Clerk, United States
District Court, Western District
of Washington

Attached to said affidavit and made a part thereof was a photostat copy of a letter, marked "Exhibit A", and shown following: [13]

A

Miss Chieko Kikutani

9. Mrs. El. Osawa.

M. K.

Dear friends,

Am sending you 12 pieces of pairs of slippers. I hope they will pass the customs. Perhaps they will be taken over anyway. I am taking this chance. You will find that they almost look like Nylon. ^{but they are made with} In fact Shawa has made these Nylon slippers and they cost \$3.30 a pair as I hope you won't wear them recklessly.

There aren't so many habutae scarves now a days. The ones they have are so ^{poor} (kudai) and the color combinations are simply atrocious. The one I'm sending isn't so pretty but it's the only one I found that I thought you would like.

Sincerely,
Mary.

(17)



The affidavit of A. S. Richards reads as follows:

[Title of District Court and Cause.]

United States of America

Western District of Wash.

Northern Division—ss.

A. D. Richards, being first duly sworn, on oath deposes and says:

That he is a Chief Warrant Officer in the United States Coast Guard stationed at Portland, Oregon. Further that from October 1, 1941, to April 14, 1942, that he was a United States Customs Agent stationed at Seattle, Washington;

That on or about October 15, 1941, he received an instruction from the Bureau of Customs to investigate C. T. Takahashi as a suspected violator of the Foreign Funds Control Act;

That together with Customs Agent A. S. Atherton he commenced this investigation in the latter part of the month of October, 1941;

That on November 2, 1941, he was at the Great Northern Dock in Seattle, Western District of Washington, Northern Division, and at that time the Japanese M/S Hikawa Maru was there, having arrived at that place from Japan that date;

That he saw Edward Y. Osawa, who had just arrived from Japan on that vessel, in the Customs baggage enclosure on that dock;

That he did not know Osawa but the latter was pointed out to him by another who described him as C. T. Takahashi's manager;

That he then saw another man talking to Osawa in the Customs baggage enclosure who was pointed out to him by [15] another officer as C. T. Takahashi;

That he knew, by reference to the passenger list of the above-named vessel, that C. T. Takahashi was not a passenger arriving thereon, and, by his knowledge of the rule that only arriving passengers were allowed in the Customs enclosure, that C. T. Takahashi had no right to be therein;

That he saw Edward Y. Osawa and C. T. Takahashi exchanging papers during their conversation at a point on the pier where Edward Y. Osawa's baggage was placed;

That he was too far away at that time to be able to identify just what papers had been exchanged between Osawa and Takahashi;

That Chief Customs Inspector A. H. Koons had given him a letter with a statement that he had this date received this letter from a Customs Inspector, and this letter, a photostat of which, marked "Exhibit A", is attached to this affidavit and made a part thereof, was in an envelope addressed, "Miss Chisato Koitabashi, c/o Mr. Ed Osawa", and noted from a reading of the letter, which was dated October 19, 1941, that the writer thereof was sending merchandise to the addressee through Ed Osawa and appeared to express a fear of detection although chancing the outcome of the effort to send merchandise into the United States past the Customs, and describing the merchandise and stating its value;

That this circumstance, together with that of the close contact of Edward Y. Osawa by C. T. Takahashi, and the fact that the said Takahashi had been ascertained not to have been a passenger arriving on that ship, led to the belief that a plan was afoot in his presence to violate the laws [16] of the United States and that C. T. Takahashi was as liable to suspicion in connection therewith as was Edward Y. Osawa who was specially named;

That upon ascertaining that Edward Y. Osawa desired that his baggage be removed to the United States Appraiser's Store for examination at a later date, he observed Osawa and C. T. Takahashi together start to leave the Customs baggage enclosure, at which time, with Customs Agent A. S. Atherton, he introduced himself to Osawa and Takahashi as a United States Customs Agent, exhibited to them the badge of such agent, and directed them to enter the adjoining waiting room for search;

That with Customs Agent Atherton he searched Edward Y. Osawa in the wash room adjoining the waiting room, and took from him a brief case containing various papers, including one letter on the letter-head of the Hua Hsin Company, dated at Shanghai, July 4, 1941, addressed to the China Import and Export Company, 212 Fifth Avenue South, Seattle, Washington, and signed for the Hua Hsin Company by M. H. Kiang, manager;

That said letter contained a reference to the sum of \$71,700.00, described therein as a deduction to be made by the China Import and Export Company

from the Hua Hsin Company's credit account, and knowing that the China Import and Export Company was but another name for C. T. Takahashi, whom he had under investigation as a suspected violator of the Foreign Funds Control Act, he took and held that letter from Takahashi's employee, Edward Y. Osawa, as an instrumentality of the crime of violating the Foreign Funds Control Act, and held the other papers as having a bearing on and contributing to the transaction described [17] in the above-mentioned Hua Hsin letter.

That he then, together with Customs Agent A. S. Atherton, searched the person of C. T. Takahashi in the wash room adjoining the waiting room on the Great Northern Dock, and removed from his person:

1. Telegram in code transmitted by Mikuni-Shoko Company, Ltd., on or about June 27, 1941, at Tokyo, Japan, addressed to C. T. Takahashi and Company, Seattle, Washington.

2. Letter dated July 5, 1941, addressed by Edward Y. Osawa, at Tokyo, Japan, to C. T. Takahashi.

3. Letter from Mikuni-Shoko Company, Ltd., in confirmation of telegram addressed to NEWYR.

4. Letter written by Edward Y. Osawa, dated July 15, 1941, at Tokyo, Japan, and sent to Charles T. Takahashi.

5. A letter dated July 16, 1941, written by M. Ikuta, Tokyo, Japan, to C. T. Takahashi and Company.

6. Letter dated July 12, 1941, written by Edward Y. Osawa, Tokyo, Japan, and addressed to C. T.

Takahashi, together with other papers, all of which related to the matter of steel storage tanks to be shipped to the Hua Hsin Company, and the payment for which was the \$71,700.00 under investigation as foreign funds of China or Japan and Nationals thereof;

In addition he took from C. T. Takahashi U. S. Customs pass or permit No. 1075 which permitted C. T. Takahashi to board vessels, after Customs boarding, but specifically denied him entrance to the Customs enclosure;

That on November 3, 1941, at 212 Fifth Avenue So., Seattle, Washington, which is the place of business of C. T. Takahashi, and of the China Import and Export Company, [18] he received from C. T. Takahashi several rejected applications for licenses to export articles and materials designated by the President as necessary to the national defense pursuant to Section 6 of the Act of Congress approved July 2, 1940;

That these rejected applications were freely offered by C. T. Takahashi with the consent of his attorney at law who was then and there present and not by reason of any search, seizure or unlawful action;

That neither on November 3, 1941, December 7, 1941, nor at any other time did he take possession of the property of C. T. Takahashi consisting of apartment houses, places of business, cash bank deposits or anything else.

A. D. RICHARDS

Subscribed and sworn to before me this 2nd day of May, 1942, at Seattle, Washington.

E. R. ROSSER

Deputy Clerk, United States
District Court, Western Dis-
trict of Washington.

Attached to said affidavit of A. D. Richards was a similar photostat copy of the same letter attached to the affidavit of A. S. Atherton, but to avoid repetition is omitted here.

The affidavit of J. W. Stanton reads as follows:

[Title of District Court and Cause.]

United States of America
Western District of Texas
El Paso Division—ss.

J. W. Stanton, being first duly sworn, on oath deposes and says: That he is an Inspector in the Bureau of Entomology and Plant Quarantine and was such officer on November 2, 1941, on which date he was stationed at Seattle, Western District of Washington, Northern Division:

That on November 2, 1941, pursuant to his official [19] duties as such Inspector, he went on board the Japanese M/S Hikawa Maru at the Great Northern Dock, Seattle, Washington, which vessel had arrived there that date from Japan;

That his duties on board that vessel consisted of inspecting the ship for plants and fruits from Japan, and insect life that might be present therein or thereon;

That to fully perform this duty it was necessary to search staterooms and receptacles, including wastebaskets, therein;

That in one stateroom on board that vessel, that date, he found in a wastebasket therein a letter in an opened envelope addressed "Miss Chisato Koitabashi, C/o Mr. Ed. Osawa";

That upon reading this discarded letter, which was dated Oct. 19, 1941, and noting that the writer thereof stated that certain merchandise was being sent to the addressee through one Ed Osawa and also the intimation or apprehension that the merchandise referred to might be taken from the bearer by the Customs, and it appearing to him that the information in the letter disclosed a plan to smuggle merchandise into the United States, he delivered the said letter and its envelope to Customs Inspector A. J. Frankel that date;

That the attached photostat, marked "Exhibit A", is a true picture of the letter and envelope therein described.

J. W. STANTON

Subscribed and sworn to before me this 29th day of April, 1942, at El Paso, Texas.

MAXEY HART

Clerk, United States District
Court, Western District of
Texas

By FLORA L. LINKER.

Deputy Clerk [20]

Attached to said affidavit of J. W. Stanton was a similar photostat copy of the same letter attached to the affidavit of A. S. Atherton, but to avoid repetition is omitted here.

The affidavit of A. J. Frankel reads as follows:

[Title of District Court and Cause.]

United States of America

Western District of Washington—ss.

A. J. Frankel, being first duly sworn, on oath deposes and says: That he is an Inspector of Customs stationed at Seattle, Washington, and was such officer on November 2, 1941, on which date he was at the Japanese M/S Hikawa Maru which was moored at the Great Northern Dock at Seattle, Western District of Washington, Northern Division.

That he then and there received from J. W. Stanton, an Inspector in the Bureau of Entomology and Plant Quarantine, a letter in an envelope addressed, "Miss Chisato Koitabashi, c/o Mr. Ed Osawa".

That upon reading this letter, which was dated October 19, 1941, and noting that the writer thereof stated that certain merchandise was being sent to the address through one Ed Osawa and also the intimation or apprehension that the merchandise referred to might be taken from the bearer by the Customs, and it appearing to him that the information in the letter disclosed a plan to smuggle merchandise into the United States, he delivered

the said letter and its envelope to Chief Inspector of Customs A. H. Koons that date.

That the attached photostat, marked "Exhibit A", truly depicts the letter and envelope herein described.

A. J. FRANKEL

Subscribed and sworn to before me this 29th day of April, [21] 1942, at Seattle, Washington.

E. M. ROSSER

Deputy Clerk, United States
District Court, Western Dis-
trict of Washington

Attached to said affidavit of A. J. Frankel was a similar photostat copy of the same letter attached to the affidavit of A. S. Atherton, but to avoid repetition is omitted here.

The affidavit of A. H. Koons reads as follows:

[Title of District Court and Cause.]

United States of America

Western District of Washington—ss.

Northern Division

A. H. Koons, being first duly sworn, on oath deposes and says:

That he is Chief Inspector of Customs stationed at Seattle, Washington, and was such officer on November 2, 1941, on which date he was at the Japanese M/S Hikawa Maru which was moored at the Great Northern Dock at Seattle, Washington, Western District of Washington, Northern Division.

That he then and there received from Inspector

of Customs A. J. Frankel, a letter in an envelope addressed, "Miss Chisato Koitabashi, c/o Mr. Ed Osawa".

That upon reading this letter, which was dated October 19, 1941, and noting that the writer thereof stated that certain merchandise was being sent to the addressee through one Ed Osawa and also the intimation or apprehension that the merchandise referred to might be taken from the bearer by the Customs, and it appearing to him that the information in the letter disclosed a plan to smuggle merchandise into the United States, he delivered the said letter and its envelope to Customs Agent A. D. Richards that date.

That the attached photostat, marked "Exhibit A", truly [22] depicts the letter and envelope here-in described.

A. H. KOONS

Subscribed and sworn to before me this 28th day of April, 1942, at Seattle, Washington

TRUMAN EGGER

Deputy Clerk, United States
District Court, Western Dis-
trict of Washington.

Attached to said affidavit of A. H. Koons was a similar photostat copy of the same letter attached to the affidavit of A. S. Atherton, but to avoid repetition is omitted here.

The affidavit of Roy L. Ballinger reads as follows:

[Title of District Court and Cause.]

United States of America

Western District of Wash.—ss.

Northern Division

Roy L. Ballinger, being first duly sworn, on oath deposes and says:

That he is Assistant Collector of United States Customs at Seattle, Washington, and was such officer on July 1, 1940, and at all times *inse*;

That on July 1, 1940, he issued, on Customs Form 3127, Permit to Enter Customs Lines, No. 1075, to C. T. Takahashi to be in effect for a period of six months;

That this period was later extended to June 30, 1941, and again extended to December 31, 1941;

That a carbon copy of this permit, No. 1075, has been and is now on file in the office of the Collector of Customs at Seattle, Washington;

That the authority for the issuance of this permit is contained in Art. 106(k), Customs Regulations of 1937;

That this permit was limited to boarding vessels after Customs boarding formalities had been concluded, and specifically denied the holder permission to enter the Customs [23] enclosure;

That Customs enclosures are areas on piers and docks designated as areas for the examination of persons and their effects when such persons and effects are landed from a vessel arriving from a foreign port or place;

That such Customs enclosure had been designated on the Great Northern Dock at Seattle, November

2, 1941, and the entrances there to and exists therefrom were guarded by Customs officers, which he had caused to be placed there that date;

That on November 2, 1941, there was in effect Bureau of Customs Circular Letter No. 2015, dated October 19, 1939, containing rules for the enforcement of the Neutrality Laws of the United States, Par. 11 of which specified the circumstances under which special passes might be issued for entrance into the Customs enclosure;

That he has examined the files of his office and finds no evidence therein of any such special pass ever having been issued to C. T. Takahashi.

ROY L. BALLINGER

Subscribed and sworn to before me this 1st day of May, 1942, at Seattle, Washington

E. M. ROSSER

Deputy Clerk, United States
District Court, Western Dis-
trict of Washington

Thereafter, on the 4th day of May, 1942, the plaintiff also served and filed the affidavit of Ronald T. Symms in resistance to defendants' petitions for return of private papers, etc. This affidavit reads as follows:

[Title of District Court and Cause.]

United States of America

Western District of Washington—ss.

Northern Division [24]

Ronald T. Symms, being first duly sworn, on oath

deposes and says: That he is the Assistant Manager of the Seattle Branch of the Federal Reserve Bank of San Francisco, Fiscal Agent of the United States, and that this affidavit is made in resistance to defendants' Petition for return of papers, etc. and Motion to Quash.

That on November 3, 1941, acting under instructions from the Secretary of the Treasury of the United States and under the authority of the Executive Order of the President of the United States, No. 8389, issued April 10, 1940, as amended, by virtue of and pursuant to the authority vested in the President of the United States by Section 5(b) of the Act of October 6, 1917 (40 Stat. 415), as amended, and acting as an authorized officer of the Federal Reserve Bank of San Francisco, Fiscal Agent of the United States, he ordered anyone having property of C. T. Takahashi, C. T. Takahashi & Company and the China & Export Company to block it.

That on the evening of December 7, 1941, by virtue of the authority aforesaid, he ordered the office of C. T. Takashahi & Company and the China Import & Export Company at 212—5th Avenue South, Seattle, Washington, to be closed and to be placed in the custody of the United States Treasury Department through William R. Jarrell, Supervising Agent for the United States Secret Service, Treasury Department, and Coordinator of Treasury Enforcement Agencies located at Seattle, Washington. The said William R. Jarrell was instructed by affiant to retain possession of the office of said C. T.

Takahashi, C. T. Takahashi & Company and the China Import & Export Company and the control thereof until further orders from the United [25] States Treasury Department through said Federal Reserve Bank of San Francisco or otherwise.

The said instructions were issued by reason of the fact that on the 7th of December, 1941, and therefore, in the opinion of the authorized officers and agents of the United States Treasury Department and the Federal Reserve Bank of San Francisco acting in its capacity as Fiscal Agent of the United States, there was and had been reasonable cause to believe that said C. T. Takahashi, C. T. Takahashi & Company and the China Import & Export Company were acting and purporting to act directly and indirectly for the benefit of and on behalf of a national of a blocked foreign country, to-wit, a national of the Government of Japan.

RONALD T. SYMMS

Subscribed and sworn to before me this 4th day of May, 1942.

E. M. ROSSER

Deputy Clerk, U. S. District
Court, Western District of
Washington

On the 5th day of May, 1942, the plaintiff served and filed a supplemental affidavit of Ronald T. Symms as follows:

[Title of District Court and Cause.]

United States of America

Western District of Washington

Northern Division—ss.

Ronald T. Symms, being first duly sworn, on oath deposes and says: That he is the Assistant Manager of the Seattle Branch of the Federal Reserve Bank of San Francisco, Fiscal Agent of the United States, and that this supplemental affidavit is made in resistance to defendants' Petition for return of papers, etc. and Motion to Quash.

That on April 28, 1942, the defendant Charles T.

[26]

Takahashi made an application to the Federal Reserve Bank of San Francisco under Section 130.3. Regulations under Executive Order No. 8389, as amended, for license to either liquidate and/or remove for storage for the duration from the premises of C. T. Takahashi & Company, 212 5th Avenue South Seattle, all office equipment, furniture, and fixtures. Proceeds from the liquidation of any of the above equipment to be deposited in blocked account with the National Bank of Commerce, Seattle.

RONALD T. SYMMS

Subscribed and sworn to before me this 5th day of May, 1942.

E. M. ROSSER

Deputy Clerk, United States
District Court, Western District
of Washington

And on the same day, May 5, 1942, the plaintiff served and filed the affidavits of John A. McNeill and John P. Hausman in resistance to said petitions and motion to quash as follows:

[Title of District Court and Cause.]

United States of America
Western District of Washington
Northern Division—ss.

John A. McNeill, being first duly sworn, on oath deposes and says: That he is a Deputy Collector of Customs, Seattle, Washington; that plaintiff's "Exhibit A" was made after the baggage declaration was filed as required by Customs Regulations by the defendant Osawa; that the said Exhibit is an official record of the United States Customs Service at Seattle.

JOHN A. McNEILL

Subscribed and sworn to before me this 5th day of May, 1942.

TRUMAN EGGER

Deputy Clerk, U. S. District
Court, Western District of
Washington [27]



LARGE TRUNK

211-511	1 MASKS	10.00
10-3-511	1 PORCELAIN DOLL	2.50
112-33-511	4 WOODEN TRAYS	25.00
212-7-511	4 TCA 8-17 du. porce.	7.50
218-60	1 TCA SET glass, col.	6.50
1210-55	1 LIGHT SHADE silk	1.50
112-33-511	2 DOLERA (HOUSE COAT) silk	2.00
1553-00	10 WOODEN SAUCERS	3.50
19-13	4 GLASS ASH TRAY	2.00
218-98	4 GLASS PLATES	7.50
748-35	1 DRIED PUM	50
218-11	15 BERRY DISH (GLASS)	3.00
717-5	19 KAT40 DRIED FISH - 8x	10.00
	22 KAT40 " " 1.2 lbs.	5.00
	27 KAT40 " " "	5.00
1527-65	24 CIGARETTE CASE (ALUMINUM)	16.00
1783-2	2 SILVER UMPA-1	8.00
1210-65	2 CAN TCA contains value negligible	10.00
1513-70	2 DOLERA (HOUSE COAT, silk)	60.00
363-50	1 SET BABY KIMONO	45.00
	1 TOY	2.50
	2 KATANA 1/4 RD.	30.00
		284.00
	WARDROBE RYUNIA	
218-60	1 GLASS BERRY DISH col.	3.00
112-33	10 TCA - 4PS col. glass	4.00
112-33	2 P.A. TCA value negligible	15.00
	PERSONAL EFF. 1	

11/1/41
T. J. Smith
E.



STEAMER TRUNK

PKG No	ARTICLE	VALUE IN YEN
1510-65 ⁷	SILK PAJAMA	12.50
1510-70 ³	✓ MOSQUITO NET	1.500
1510-60 ⁴	✓ 1 ROLL SILK cloth ^{1/30"}	20.00
1510-69 ¹	✓ TORTOISE SHELL SIG CASE	7.00
1798- ^{full}	PERSONAL EFFECTS	
KORI "B"		
1510-15 ^{1/2}	✓ DRIED FISH 3#	2.00
1510-70 ¹	✓ DOLL	2.50
1792- ^{full}	✓ SEAWEED	2.00
1719-87 ²	✓ COTTON NIGHT GOWN	1.00
1510-70 ³	✓ CHINA WARE TEASE ^{1 doz. 11 pcs}	5.00
1719-87 ²	✓ HOUSE DRESS ^{cotton}	1.50
1510-68 ²	✓ P4ASE ^{silk}	2.50
1510-68 ²	✓ F4RO SHIKI WRAPPING ^{silk} ²⁰⁰⁰	1.00
16.50		
PARCELS		
1510-70 ²	60 ✓ DOLL IN GLASS CASE	50.00
1510-70 ²	61 ✓ " " " "	50.00
1510-50 ²	62 ✓ GLASS CASE FOR DOLL ^{1/2 dozen}	10.00
1720-35 ²	✓ 2 TUBS MISO	10.00
1720-35 ²	✓ 2 TUBS MISO TAKOWAN (Pickles)	15.00
1710-70 ²	✓ TOY	10.00
1710-70 ²	✓ DOLL IN CASE	10.00
1510-70 ²	1 PAR M A.7 TEA SET ^{deyone} ^{8pc}	25.00
1510-70 ²	✓ B " " 1 ^{8pc}	15.00
1510-70 ²	✓ B " " 1 ^{8pc}	10.00
190.00		



SUIT CASE

PKG. No.	ARTICLE	VALUE IN YEN
1210-65%	✓ 1 SCARF apple silk	10.00
1205-60%	✓ 1 ROLL SILK w/30"	15.00
1208-60%	✓ 6 STOCKING (SILK)	9.00
120-65%	✓ 1 SCARF silk	2.00
	✓ 1 SET JAPANESE MEN'S KIMONO	50.00
12-50% + 10%	✓ 4 P dec. east - (2pc in all)	5.00
1798-pen	PERSONAL EFFECT	
		91.00
1205-60%	CARTON	
1PK.	✓ A. SILK CLOTH w/30"	10.00
	✓ B. SILK CLOTH	15.00
1818-70%	C. TOY DOLL SET	10.00
1722-31%	E 3 PKG SEAWEED	3.00
187-45%	✓ F WALL PENDANT ^{metal}	15.00
1813-70%	G. TOY	3.00
		56.00
Carton (details not listed)		
387-40%	1 metal vase	10.00
1403-25%	5 large y. m. bowls	5.00
107-65%	1 paper lantern, part bamboo	1.50
1211-65%	1 silk hakama	5.00
187-25%	3 pairs muss. suit. (imp. of horn)	1.50
1798-31%	3 seaweed	.60
Overseas		
1572-110%	100 pen 3/4 club legal buttons, metal	7.50
1207-60%	2 doz silk handkerchiefs, plain, lined	12.00

KORI "A"

PKG No.	ARTICLE	VALUE IN YEN
100-702	✓ CHEAP DOLL	150
1010-65	✓ A. KIMONO FOR CHILD girl	500
107-702	✓ B BAMBOO TRAY	100
107-502	✓ C 6 FANS	200
1008-60	✓ D ASH TRAY	200
1008-60	✓ E SANDALS ofuggers	600
140	✓ G 2 SANDALS	600
1007-65	✓ B. CHEAP CLIP jewelry	250
1008-35	✓ C 4 BRUSH hairpins	100
1210-65	✓ 3 BELTS SASH silk appl	200
100-100	✓ DRIED FISH 2 lbs.	150
100-702	✓ CHEAP DOLL	250
107-45	✓ BAMBOO TRAY	200
140	✓ BAMBOO TRAY	200
1722-000	✓ SEAWEED	100
17006-6	✓ TEA	200
1518-70	✓ 7 PC. CHEAP NOVELTIES toys	300
120-65	✓ OBI (SASH) silk appl	200
119-37	✓ SCHOOL MADE FOODS custom appl.	50
148-25	✓ COLORED PAPER paper mfg.	50
110-65	✓ OBI (SASH) silk appl.	500
112-35	✓ 3 WEATHER VANE wood mfg.	450
13-25	✓ MEDICINE pills	150
100-30	✓ BUCKLE TORTISE shell mfg.	200
107-30	✓ CHEAP BRACELET jewelry	100
102-70	✓ TEA SET (HEAD) du. por. 8 pc	250
		6950
527-2	110/100	
	2 pr cufflinks } then 500	
	2 brooches } jewelry	
	11/10/11	
	10/10/11	



The rest of the page is blank white space.

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

UNITED STATES CUSTOMS SERVICE

RECEIPT FOR BAGGAGE AND PERMIT

Port of Seattle, Wash, 1924

The following packages imported on the

Hibawa Maru
No. 2
by Yasumi Osawa

have been sent to public store Federal
 retained on wharf Official Wharf

MARKS AND Nos.:

- 1 suitcase
- 3 trunks
- 5 cases
- 6 boxes bags
- 3 hand pieces
- 4 bags

Value claimed \$1757.22 total pieces.

Said to contain no dice

To be shipped in box to _____

[Signature] Inspector.

PERMIT.

Above packages released for _____ (Export, etc.)

C.F. 950

192

of Customs.

NOTICE.—Above baggage, if not transferred from wharf within 48 hours, will be sent to Public Store (New York, 641 Washington Street).

EXPORT BAGGAGE will be retained in Public Store until 24 hours before departure.

Present this receipt at Customhouse to obtain shipping permit.

Customs Form No. 10
TREASURY DEPARTMENT
APR 1902, O. B. 1907, T. D. 2008
August 1907

UNITED STATES CUSTOMS SERVICE

No. 6

TICKET FOR GOODS DELIVERED FROM STORE, ETC.

(If goods are withdrawn for exportation, transportation, or transfer, this form shall be prepared IN QUADRUPPLICATE: ORIGINAL to be forwarded to Collector at time of business each day on report of goods withdrawn; DUPLICATE for cartman or lighterman; TRIPLICATE for use of office to whom goods are to be delivered, and QUADRUPPLICATE for storekeeper's record. In all other cases, to be prepared IN TRIPPLICATE: ORIGINAL for Collector; DUPLICATE for cartman or lighterman; and TRIPLICATE for storekeeper's record.) T. D. 2008.

PORT Seattle Wa Nov 3 1941

Goods delivered from store at apps to be delivered

to (Importer, Vessel, Dock No., etc.) ... OR ... (Consumption, Export, etc.) Permit, W. H. Entry No. _____

MARKS AND NUMBERS

Hekawa Maru 11/2

CONDITION, ETC.

Y. OSAWA

22 Pcs.

Baylee
118151

Fisk & Co

EX F. 1941

NOV. 12 1941

Birks

Total Packages No. (22)

C. H. License No. _____ City No. _____ Truck or Lighter No. _____

Delivered to cartman or lighterman in good condition unless otherwise noted.

Received from warehouse in good condition unless otherwise noted.

H. 2 PM 11/12/41 Casebeer 1941
(Inspector or storekeeper)

H. [Signature] 1941
(Cartman or Lighterman)

Signature _____
(Warehouse proprietor)

Signature _____
(Warehouse proprietor) (Inspector or storekeeper)



[Title of District Court and Cause.]

United States of America

Western District of Washington

Northern Division—ss.

John P. Hausman, being first duly sworn, on oath deposes and says: That he is President of Geo. S. Bush & Co., Inc., Customs Broker, and that this affidavit is made in resistance to defendants' Petition for return of papers, etc. and Motion to Quash.

That plaintiff's Exhibit #2 is a consumption entry, United States Customs Service which was signed by Edward Y. Osawa, also known as Yoshi-mi Osawa, before me as Notary Public in and for the State of Washington; that said Exhibit was prepared under direction of the affiant from defendant's Exhibit "A", being the baggage declaration and entry of the above named Osawa; that said consumption entry was to be filed in the Custom House at Seattle and is a summary of all the articles with the respective values of all of the articles as listed in the baggage declaration and entry and was prepared on November 12, 1941.

JOHN P. HAUSMAN

Subscribed and sworn to before me this 5th day of May, 1942.

TRUMAN EGGER

Deputy Clerk, U. S. District
Court Western District of
Washington

Plaintiff's Exhibit #2, referred to in the affidavit of John P. Hausman follows: [35]

PLAINTIFF'S EXHIBIT No. 2

Customs Form 7501
 Treasury Department
 Arts. 310, 344, 423, 435, 505, C. R. 1937;
 T. D.'s 49658, 50251
 Dec. 1940

T. E. No. Copy for This space for number
 (Collector, comptroller, statistics, etc.) and date of entry
 Port from CONSUMPTION ENTRY
 Via United States Customs Service S.E. 950
 (Bonded carrier) District No. 30 Nov. 12, 1941
 Port of—Seattle, Wash. Term Bond

U. S. Appraiser's Store
 Date filed—November 12, 1941

Merchandise imported by—Yoshimi Osawa

(Name and address)

Arrived on the—Jap M/S "Hikawa Maru on Nov. 2, 1941, from—Yokohama

(Name of importing vessel or carrier. If vessel, give flag and motive power) (Date of original importation)

Exported from—Japan on 10/20/41 P. F., Yokohama, Japan

(Country) (Date) (Consular Invoice Number, place, and date certified)

Marks and Numbers	Merchandise Packages and Description	Tariff Paragraph	Value in Foreign Money	Entered Value in U.S. Money	Rate	Duty
	Quantity		Dollars only	Dollars only		Dollars Cts.

Jap Yen @ .23439

Jap Yen

Baggage Declaration #118151

22 pkgs. cont'g:

Silk Fabric

1205 195.00

.46 60%

20.16

Plaintiff's Exhibit No. 2—(Continued)

Marks and Numbers	Merchandise Packages and Description	Quantity	Tariff Paragraph	Value in Foreign Money	Entered Value in U.S. Money	Rate	Duty
				Jap Yen	Dollars only		Dollars Cts.
	Baggage Declaration #118151—Cont.						
	Silk Scarves (Wg. Apparel)		1210	228.00	53	65%	34.45
	Handkerchiefs (Silk) 14 dz.		1209	34.50	8	60%	4.80
	Stockings 3 doz.		1208	45.00	10	60%	6.00
	Lacquerware		412	58.60	14	331/3%	4.67
	Cloissone Vases		339	302.00	71	50%	35.50
	Dec. Earthenware		211	15.00	4	50%	2.00
[Stamp]:	3 dz. pcs., Tableware Hhd.					10c dz.	.30
WEIGH							
[In pencil]:	Toys, (dolls)		1513	135.50	32	70%	22.40
	Dec. Porcelain		212	56.00	13	70%	9.10
	Cons. Invoice					10c dz.	.40
	waived under						
	Provisions of						
	Art. 299 (b) (6)						
	J.A.M.						
	D.C.						
	Blown Glassware		218f	24.00	6	60%	3.60
	Mfrs. of Silk		1211	12.00	3	65%	1.95
	Smokers Articles		1552	20.00	5	60%	3.00
	(continued)						

[Stamp]: PAID Nov. 12 1941. By (illegible), Cashier

Number of invoices..... W. H. Entry No..... G. O. No.....
 Signature

This form may be printed by private parties provided it conforms
 to official form in size, wording, color, and arrangement. For sale by
 collectors of customs at price of 25 cents for block of 100.

Per—Yashimi Osawa
 Address—4010 - 48th So.
 Seattle, Wash.

Plaintiff's Exhibit No. 2—(Continued)
 Customs Form 3297

TREASURY DEPARTMENT

Art. 410, C.R. 1931

Feb. 1934

Declaration for the Free Entry of Articles Taken
 Out of the United States By the Importer and
 for Articles Acquired Abroad by Returning Resi-
 dents of the United States

(To be used when articles do not accompany the
 passenger and were not listed on a baggage decla-
 ration and entry)

United States Customs Service

District No. 30, Port of Seattle, Wash., Nov. 10,
 1941

I, Yoshimi Osawa, declare under oath that I am
 a resident of Seattle, State of Washington; that I
 last departed from the United States in the Jap
 M/S "Hikawa Maru" on or about the 7th day of
 (Vehicle or carrier)

March, 1941, from the port of Seattle; that I ar-
 rived in the United States on my return at the
 port of Seattle, Wash. on or about the 2nd day of
 November, 1941, in the Jap. M/S "Hikawa Maru"
 (Vehicle or carrier)

from Yokohama, accompanied by; that, except such
 as are hereinafter enumerated, all the articles now
 (Wife, child, maid, etc)

imported by me in the "Hikawa Maru" from Japan
 (Me or us) (Vehicle or carrier)

Plaintiff's Exhibit No. 2—(Continued)

arriving on or about Nov. 2, 1941, consist of wearing apparel or personal or household effects taken abroad by me, or by those members of my family now accompanying me, for personal use; and that no repairs or alterations were made to such articles abroad, except as follows:

(If any repairs or alterations were made abroad, describe the articles and state the cost of repairs or alterations, and the character thereof. If none were made, so state)

Name of articles

Description of repairs

Cost or value of repairs

I further declare that the following-described articles were acquired abroad for personal or household use, or as souvenirs or curios, and that none of these was bought or otherwise acquired on commission, or is intended for sale:

Description

8 items listed on consumption entry

Cost or value

Yen 428.00

(If no such articles were acquired abroad, so state)

I further declare that I have not during the past 30 days preceding my arrival above referred to received an exemption from duty such as is allowed a returning resident of the United States, except as follows:

I further declare that the following-described ar-

Plaintiff's Exhibit No. 2—(Continued)

articles were acquired abroad on a commission for other persons, or are intended for sale:

Description

Cost or value

(If no such articles were acquired abroad, so state)

(Signature) YOSHIMI OSAWA

Declared to under oath before me this 8 day of Nov., 1941.

(Name) JOHN P. HAUSMAN

(Official title) Notary Public.

(Note.—This declaration must be made before some person duly authorized to administer oaths. If a family has been traveling abroad, it may be made for the family by the principal member thereof) [37]

Plaintiff's Exhibit No. 2—(Continued)

Customs Form 7501 B
 Treasury Department
 T. D. 37789
 June 1933

Entry No.

CONSUMPTION ENTRY—Continuation Sheet

Importer—Yoshimi Osa-
 wa.

U. S. Customs Service

Marks and Numbers	Merchandise Packages and Description	Quantity	Tariff Paragraph	Value in Foreign Money Jap Yen	Entered Value in U.S. Money Dollars only	Rate	Duty
	Dried Fish 20 lbs.		717c	23.50	5	1 1/4c lb.	.25
	Jewelry		1527				
	Tea 9 lbs.		(e)	30.50	7	65%	4.55
	Swords 2 pcs.		1783	27.00	6	Free	Free
	Mosquito Net		363	30.00	7	50%	3.50
			1529				
	Seaweed		(a)	15.00	3	90%	2.70
	Mfrs. of Cotton		1722	6.60	2	Free	Free
	Mfrs. of Glass		919	4.00	1	37 1/2%	.38
	Miso		230	13.00	3	50%	1.50
	Toys		775	25.50	6	35%	2.10
	Mfrs. of Metal		1513	13.00	3	70%	2.10
	Metal Vase 1 pc.		397	16.50	4	45%	1.80
	Lacquer Bowls 5 pcs.		339	10.00	2	40%	.80
			1403	6.50	1	25%	.25

Plaintiff's Exhibit No. 2—(Continued)

Marks and Numbers	Merchandise Packages and Description Quantity	Tariff Paragraph	Value in Foreign Money Jap Yen	Entered Value in U.S. Money Dollars only	Rate	Duty Dollars Cts.
	Jewelry	1527				
		(c)	85.00	20	110%	22.00
	Sandals	1530				
		(e)	16.00	4	35%	1.40
	Hair Pencils 4 pcs.	1506	1.00	1	2c ea.	.08
	Mfrs. of Silk	1210	5.00	1	65% ^q	.65
	Exemptions claimed by returning American citizen:	1798			Free	Free
	Pink & White Silk Material 15 yds.		42.00	10		
	Printed Silk Kimonos 4 pcs.		64.00	15		
	Printed House Coats 6 pcs.		42.00	10		
	Mans Silk Robe 1 pc.		15.00	3		
	Silk Stockings 2 doz.		48.00	11		
	Brocade Obi Material 10 yds.		130.00	30		
	Silk Shirts 9 pc.		63.00	15		
	Silk Pajamas—2 prs.		24.00	5		
			<hr/> 1881.70	<hr/> 441		<hr/> 192.39

[Stamp]: Nov 12 1941. By (illegible) Cashier.

For sale by Collectors of Customs at price of 25 cents for block of 100.

[38]

Plaintiff's Exhibit No. 2—(Continued)

Customs Form 6417-A
 Treasury Department
 T. D. 50251
 Dec. 1940

SUMMARY OF ENTERED VALUES

—Continuation Sheet
 U. S. Customs Service

Entry No.
 Importer—Yoshimi Osa-
 wa.

Marks and Numbers	Merchandise Packages and Description	Tariff Paragraph	Value in Foreign Money Jap Yen	Entered Value in U.S. Money Dollars only	Rate	Duty Dollars Cts.
	Dried Fish 20 lbs.	717c	23.50	5	1 1/4 lb.	.25
	Jewelry	1527				
	Tea 9 lbs.	(e)	30.50	7	65%	4.55
	Swords 2 pcs.	1783	27.00	6	Free	Free
	Mosquito Net	363	30.00	7	50%	3.50
		1529				
	Seaweed	(a)	15.00	3	90%	2.70
	Mfrs. of Cotton	1722	6.60	2	Free	Free
	Mfrs. of Glass	919	4.00	1	37 1/2%	.38
	Miso	230	13.00	3	50%	1.50
	Toys	775	25.50	6	35%	2.10
	Mfrs. of Metal	1513	13.00	3	70%	2.10
	Metal Vase 1 pc.	397	16.50	4	45%	1.80
	Lacquer Bowls 5 pcs.	339	10.00	2	40%	.80
		1403	6.50	1	25%	.25

Plaintiff's Exhibit No. 2—(Continued)

Marks and Numbers	Merchandise Packages and Description Quantity	Tariff Paragraph	Value in Foreign Money Jap Yen	Entered Value in U.S. Money Dollars only	Rate	Duty Dollars Cts.
	Jewelry	1527	85.00	20	110%	22.00
	Sandals	(c) 1530	16.00	4	35%	1.40
	Hair Pencils 4 pcs.	(e) 1506	1.00	1	2c ea.	.08
	Mfrs. of Silk	1210	5.00	1	65% ^q	.65
	Exemptions claimed by returning American citizen:	1798			Free	Free
	Pink & White Silk Material 15 yds.		42.00	10		
	Printed Silk Kimonos 4 pcs.		64.00	15		
	Printed House Coats 6 pcs.		42.00	10		
	Mans Silk Robe 1 pc.		15.00	3		
	Silk Stockings 2 doz.		48.00	11		
	Brocade Obi Material 10 yds.		130.00	30		
	Silk Shirts 9 pc.		63.00	15		
	Silk Pajamas—2 prs.		24.00	6		
			<hr/> 1881.70	<hr/> 441		<hr/> 192.39

Plaintiff's Exhibit No. 2—(Continued)

SUMMARY OF EXAMINATION AND APPRAISEMENT

CE 950

(Kind of entry and number)
11/12, 1941

Appraiser:

The attached invoice(s) was(were) presented with the above-specified entry. Pursuant to section 499 of the Tariff Act of 1930, I hereby designate the following packages or quantities to be opened and examined at the place or places specified: [Stamp]: WEIGH

Page No.

Packages or Quantities

Place of Examination

[Stamp]: WEIGH

[In writing]: All

[Stamp]: IN APPRAISERS STORE

G. TULEEN, Deputy Collector.

Collector:

Nov 13 1941

The examination and appraisalment of the merchandise covered by the attached invoice(s) have been made in accordance with law, and the following is a summary of my report thereof as noted on the invoice(s):

Plaintiff's Exhibit No. 2—(Continued)

EXPLANATION.—A check mark (✓) in the appropriate column below indicates that—(a) the appraised value agrees with the entered value as represented by the information set forth on the invoice and in any importer's notations endorsed thereon or attached thereto; (b) the advisory classification agrees with that indicated by the importer on the invoice(s); or (c) the quantities in the packages ordered for examination are correctly stated on the invoice(s), as the case may be. Findings at variance with the invoice description and information are indicated by notations in the appropriate columns below as follows: Value advanced, "Adv"; value reduced, "Red"; higher rate applies, "RA"; lower rate applies, "RR"; excess quantity, "E"; shortage in quantity, "S"; not legally marked, "NLM"; prohibited, "P."

Marks and Numbers	Examiner and Date of Examination	Appraised	Advisory Classification	Quantities	Date of Release	Remarks
Addressed 22 var pkgs.	SSB Nov. 12, 1941	✓	✓	✓	Nov. 12, 1941	

ALAN J. (Illegible), Appraiser.

[40]

Plaintiff's Exhibit No. 2—(Continued)

SUMMARY OF EXAMINATION AND APPRAISEMENT CE

(To be attached to invoice(s) this side up) (Kind of entry and number) 11/12, 1941

Appraiser: The attached invoice(s) was(were) presented with the above-specified entry. Pursuant to section 499 of the Tariff Act of 1930, I hereby designate the following packages or quantities to be opened and examined at the place or places specified:

Page No. Packages or Quantities [Followed by blank ruled form] Place of Examination

Collector: (Date) Collector.

The examination and appraisalment of the merchandise covered by the attached invoice(s) have been made in accordance with law, and the following is a summary of my report thereof as noted on the invoice(s):

Plaintiff's Exhibit No. 2—(Continued)

EXPLANATION.—A check mark (✓) in the appropriate column below indicates that—(a) the appraised value agrees with the entered value as represented by the information set forth on the invoice and in any importer's notations endorsed thereon or attached thereto; (b) the advisory classification agrees with that indicated by the importer on the invoice(s); or (c) the quantities in the packages ordered for examination are correctly stated on the invoice(s), as the case may be. Findings at variance with the invoice description and information are indicated by notations in the appropriate columns below as follows: Value advanced, "Adv"; value reduced, "Red"; higher rate applies, "RA"; lower rate applies, "RR"; excess quantity, "E"; shortage in quantity, "S"; not legally marked, "NLM"; prohibited, "P."

Marks and Numbers	Examiner and Date of Examination	Appraised	Advisory Classification	Quantities	Date of Release	Remarks
-------------------	----------------------------------	-----------	-------------------------	------------	-----------------	---------

[Followed by blank ruled form]

....., Appraiser.

[41]

Plaintiff's Exhibit No. 2—(Continued)

Customs Form 6417

Treasury Department

Arts. 298, 302, 312, 313, 317, 769, 772,

776, 784, 818, 865, C. R. 1937;

T. D.'s 46296, 49658, 50251

Dec. 1940

[Rubber Stamp]: Geo. S. Bush & Co., Inc.

Custom Brokers 259-62 Colman Bldg.

Seattle, Wash.

SUMMARY OF ENTERED VALUES

United States Customs Service

District No. 30

(Bonded carrier) Port of—Seattle, Wash.

This space for number
and date of entry

S.E.

xx

U. S. Appraiser's Store

Date filed—November 12, 1941

Merchandise imported by—Yoshimi Osawa

(Name and address)

Arrived on the—Jap M/S "Hikawa Maru on Nov. 2, 1941, from—Yokohama

(Name of importing vessel or carrier. If vessel, give flag and motive power) (Date of original importation)

Exported from—Japan on 10/20/41 P. F., Yokohama, Japan

(Country) (Date)

(Consular Invoice Number, place, and date certified)

Plaintiff's Exhibit No. 2—(Continued)

Marks and Numbers Merchandise Packages and Description Quantity Value in Foreign Money Jap Yen Entered in U.S. Money Dollars only Rate Dollars Cts. Duty

Marks and Numbers	Merchandise Packages and Description	Quantity	Value in Foreign Money Jap Yen	Entered in U.S. Money Dollars only	Rate	Dollars Cts. Duty
	Jap Yen @ .23439					
	Baggage Declaration #118151					
	22 pkgs. cont'g:					
	Silk Fabric		195.00	46	60%	20.16
	Silk Scarves (Wg. Apparel)		228.00	53	65%	34.45
	Handkerchiefs (Silk) 14 doz.		34.50	8	60%	4.80
	Stockings 3 doz.		45.00	10	60%	6.00
	Lacquerware		58.60	14	33 1/8%	4.67
	Cloisone Vases		302.00	71	50%	35.50
	Dec. Earthenware		15.00	4	50%	2.00
	3 dz. pcs. Tableware Hhd.				10c dz.	.30
	Toys, dolls)		135.50	32	70%	22.40
	Dec. Porcelain		56.00	13	70%	9.10
	4 dz. Hhd. Tableware				10c dz.	.40
	Blown Glassware		24.00	6	60%	3.60
	Mfrs. of Silk		12.00	3	65%	1.95
	Smokers' Articles		20.00	5	60%	3.00

Number of invoices..... W. H. Entry No..... G. O. No.....
 Signature
 Per
 Address—4010 - 48th So.
 Seattle, Wash.

Yokohama,

1941

Mr. Edward G. Osawa

-111

CABLE ADDRESS
 NIKKO FUJI YOKOHAMA
 BENTLEY'S CODE USED

NIKKO & FUJI CO.,

EXPORTERS & MANUFACTURERS

— IN —

SILK AND CURIOS

No. 21, 2-CHOME BENTEN-DORI, YOKOHAMA, JAPAN.
 TEL. NO. (HONKYOKU) 3013

絹物雜貨貿易商
 日光富士商會
 横濱市中央区本町二ノ二
 電話本局三〇一三番

PROPRIETOR
 M. NAKAYAMA

Date	No.	DESCRIPTION	Quantity	③	Amount
1798-2	1205-607				
1205-607	200	Pink Silk material ^{up 39"}	5 yds	2.80	14.00 x
		"	5	2.80	14.00 x
		White "	5	2.80	14.00 x
1210-657	✓	men's Scarf silk appl	3	1.50	4.50
1209-601	✓	Handkerchief silk, bloused	1 Doz		6.00
					<u>52.50</u>

11/7/41
 Bicks
 OX

Rec'd Payment
 Nikko & Fuji



①



Yokohama,
Mr. Edward Y. Osawa

1941

NIKKO & FUJI CO.,

EXPORTERS & MANUFACTURERS

IN

SILK AND CURIOS

NO. 21, 2-CHOME BENTEN-DORI, YOKOHAMA, JAPAN.

TEL. NO. (HONKYOKU) 3013

絹物雜貨貿易商

日光富士商會

横浜市中央区通天通二ノ二

電話本局三〇一三番

CABLE ADDRESS

NIKKO FUJI-YOKOHAMA

BENTLEY'S CODE-USED

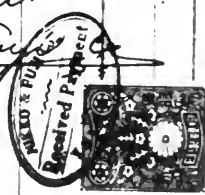
PROPRIETOR

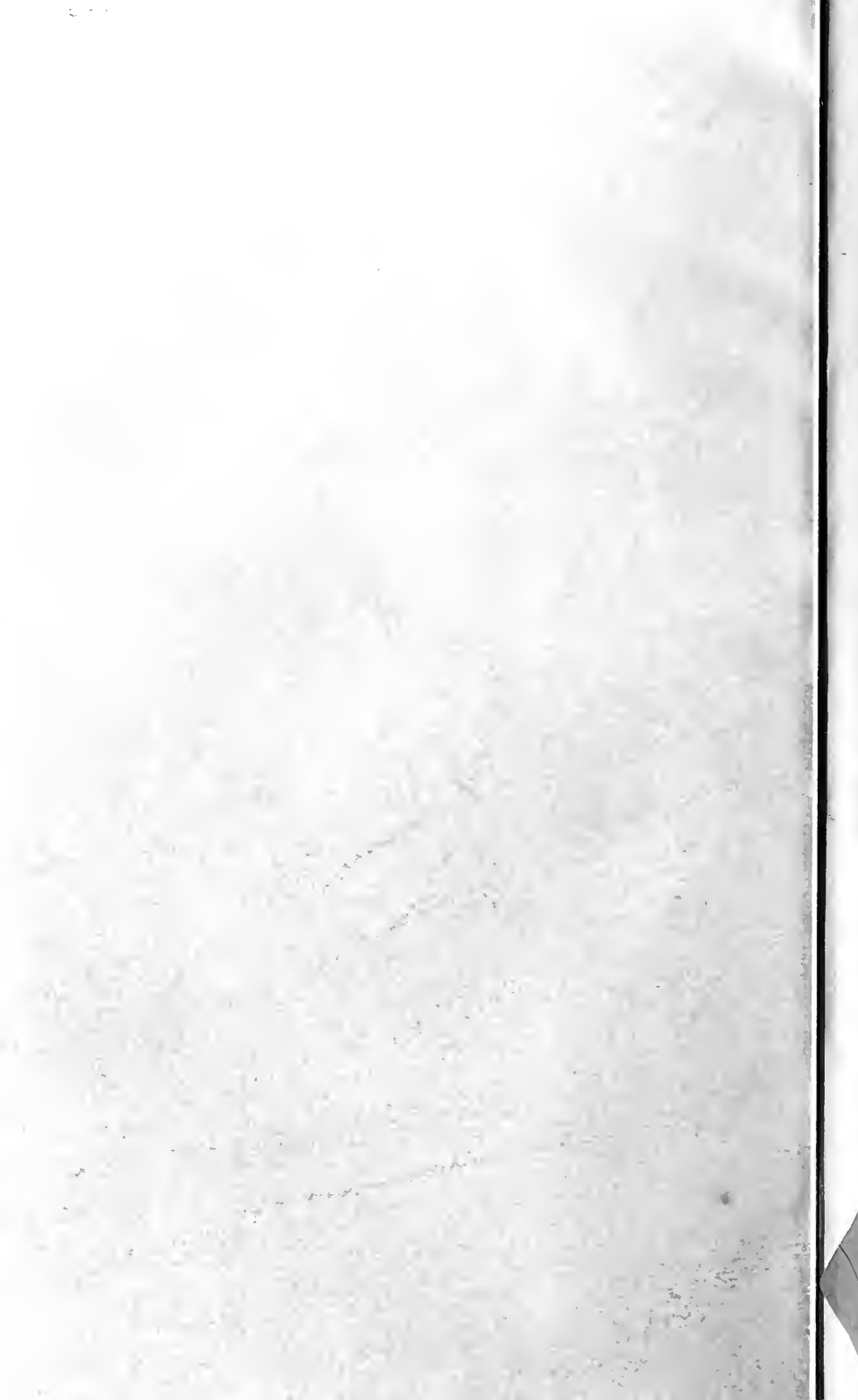
M. NAKAYAMA

Date	No.	DESCRIPTION	Quantity	@	Amount
1798/311 2208-67%	1205-601	Stocking. silk	24	2.00	48.00 X

11/7/41
Bills
\$

Rec'd Payment
Nikko & Fuji





Mr. Edward J. Osawa
 Yokohama, Aug. 1941

NIKKO & FUJI CO.,
 EXPORTERS & MANUFACTURERS

CABLE ADDRESS
 NIKKO-FUJI, YOKOHAMA
 BENTLEY'S DOOR - JAPANESE

PROPRIETOR
 M. NAKAYAMA

SILK AND CURIOS
 No. 21, 2-CHOME BENTEN-DORI YOKOHAMA, JAPAN.
 TEL. (HONKYOKU) No. 2-3013

Date	No.	DESCRIPTION	Quantity	Amount
1205-601		Cloche del chic materials ^{of 30"} ✓ 48½	284	\$135.80
412-33'32		Racquet Dry wood ✓ 12	0.80	9.60
		✓ 1 racket's set	✓ 1	10.00
		✓ 1 Fine cups	✓ 6	6.00
Per 1798/Price of 1210-601		Printed Linonossack ✓ 24	16.00	64.00
1209-601		✓ 1 School coats	✓ 6	7.00
1270-601		✓ 10 Braced ^{of 100} materials	✓ 10	13.00
1209-601		✓ 1 Men's Polo	✓ 1	15.00
		✓ 1 Ladies School Baseball	✓ 3 Dgs	9.00
		✓ 1	✓ 1	7.50
Per 1798/Price of 1208-601		✓ 19 Men's Silk Shirts	✓ 19	7.00
1209-601		✓ 1 Men's Socks	✓ 3 Dgs	36.00
Per 1798/Price of 1210-601		✓ 1 Men's Pajamas	✓ 2	24.00
339-601		✓ 1 Coats	✓ 1	9.00
		✓ 1 Wheel Hubs	✓ 2	60.00
		✓ 5	✓ 5	26.00
		✓ 4	✓ 4	18.00
		✓ 4	✓ 4	72.00
		✓ 4	✓ 4	40.00
		Total		\$862.90

11/14/41
 Birley &

Race's Giftment
 Nikko & Fuji's Co





Plaintiff's Exhibit No. 2--(Continued)

Department of Agriculture

T. I. S. Cat. No. 1

TEA CHOP LIST AND RELEASE PERMIT

Request for Examination

U. S. Tea Inspection Service

Port of--Seattle, Wash.

To U. S. Tea Examiner Port of--Seattle, Wash.

Port

Entry No.--950

Nov 12 1941

Bond No.--S. E.

I. T. No.....

Date--Nov. 12, 1941.

Sir:

Examination is requested of the teas entered as noted above.

Imported by--Yoshimi Osawa Shipped by--Yoshimi Osawa of

Imported in the--Jap. S/S "Hikawa Maru" Arrived from--Yokohama on--Oct. 20, 1941.

Subject to the provisions of the Act of March 2, 1897, and amendments thereto.

To be sampled at--U. S. Appraiser's Store

(Pier number or warehouse address)

Invoice No.--Baggage Declaration #118151 Date 19..... Place.....

Marks and Numbers	No. of Packages	Kind	How Packed	Net Lbs. Each	Total Net Pounds	Dutiable Coverings	Examiner's Action
#26	2 cans	Tea		1#	2#	No	
31	6 pkgs.	"		1#	6#	"	
47	1 pkg.	"		1#	1#	"	

Plaintiff's Exhibit No. 2—(Continued)

(Excepting such packages
as are damaged)

Transmitted to Tea Examiner by
.....
of Customs.

Signature of importer:

YOSHIMI OSAWA
Address—Seattle, Wash.

Date—Nov 12 1941

REPORT OF EXAMINATION AND RELEASE PERMIT

Port of

To the Storekeeper or Inspector:

Samples of the teas described above have been examined and found—Not to come within the prohibition of the Act of March 2, 1897, and amendments, and the teas are released except as noted on margin. If contents or coverings are found dutiable, this release must be countersigned by collector.

Cause of rejection (if any):

None

L. W. NEWTON
Tea Examiner.

This form to be made in duplicate at examining ports, triplicate at other ports. If this form is used as a pro forma invoice, give value of dutiable coverings.

[46]

Plaintiff's Exhibit No. 2—(Continued)

Customs Form 7551

Treasury Department

Arts. 260, 270, 272, 289, 299, 300, 314, 354, 412,
482, 497, 553, 574, 591, 625, 633, 697, 770, 795, 910,
1254 C. R. 1937; T. D.'s 45474, 49658 June 1939

No. 950

UNITED STATES CUSTOMS SERVICE
SINGLE CONSUMPTION ENTRY BOND

(To redeliver merchandise, to produce documents, to perform conditions of release, such as to label, hold for inspection, set-up, etc. To be taken in all cases when release is requested prior to inspection, examination, or liquidation).

Know All Men By These Presents, That* Yoshimi Osawa of Seattle, Washington, as principal, and* Fidelity & Deposit Co. of Md., of Baltimore, Md. and, of as sureties, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of Eight Hundred dollars (\$800.00) for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this 12th day of November, 1941

Whereas, certain articles have been imported at the port of Seattle, Wash. and entered at said port for consumption on entry No. 950 dated Nov. 12, 1941, and described therein and

Whereas, the said principal desires release of said

Plaintiff's Exhibit No. 2—(Continued)

articles prior to the ascertainment by customs officers of the quantity and value thereof, and of the full amount of the duties and charges due thereon, and prior to the decision by the proper officer as to the right of said articles to admission into the United States:

Now, Therefore, the Condition of This Obligation is Such, That—

(1) If the above-bounden principal shall redeliver or cause to be redelivered to the order of the Collector of Customs, when demanded by such collector (the said demand to be made not later than twenty (20) days after the appraiser's report), such of the merchandise as was not sent to the public stores, and also shall redeliver to the collector, on demand by him, in accordance with law and regulations in effect on the date of the release of said articles, any and all merchandise found not to comply with law and regulations in effect on the date of the release of said articles, any and all merchandise found not to comply with the law and regulations governing its admission into the commerce of the United States, and if the said principal shall mark, label, clean, fumigate, destroy, export, and do any and all other things in relation to said articles that may be lawfully required, and shall hold the same for inspection and examination; or if, in the event of failure to comply with any or all of the conditions hereinabove referred to, he shall pay the said collector an amount equal to the value of said art-

Plaintiff's Exhibit No. 2—(Continued)

icles as set forth in said entry, plus the duty thereon;

(2) And if the above-bounden principal shall deliver to the said collector such consular invoices, declarations of owners or consignees, certificates of origin, certificates of exportation, and other declarations, certificates, and documents as may be required by law or regulations in connection with the entry of said articles, and in the form and within the time required by law or regulations, or any lawful extension thereof, or in the event of failure to comply with any or all of the conditions of this section shall pay to said collector such amounts as liquidated damages as may be demanded by him in accordance with the law and regulations, not exceeding the penal sum of this obligation for any breach or breaches thereof;

Then this obligation to be void; otherwise to remain in full force and effect.

Plaintiff's Exhibit No. 2—(Continued)

Signed, sealed and delivered in the presence of—
S. DUSTEIN

Seattle, Wn.

H. B. WESLEY

Seattle, Wn.

S. DUSTEIN

Seattle, Wn.

H. B. WESLEY

Seattle, Wn.

YOSHIMI OSAWA

(Principal)

FIDELITY & DEPOSIT CO.

OF MD.

By JOHN P. HAUSMAN [Seal]

Attorney-in-Fact

*If the principal or surety is a corporation, the name of the State in which incorporated should also be shown. [47]

Plaintiff's Exhibit No. 2—(Continued)

Customs Form 7051-A

Treasury Department

Arts. 146, 314, C. R. 1937; T. D. 50251

Dec. 1940

T. E. No.	CONSUMPTION ENTRY PERMIT	This space for number
Port from	United States Customs Service	and date of entry
Via	District No. 30	950
(Bonded carrier)	Port of—Seattle, Wash.	S.E. Nov. 12, 1941
		xx

U. S. Appraiser's Store
Date filed—November 12, 1941

Merchandise imported by—Yoshimi Osawa
(Name and address)

Arrived on the—Jap M/S "Hikawa Maru on Nov. 2, 1941, from—Yokohama
(Name of importing vessel or carrier. If vessel, give flag and motive power) (Date of original importation)

Exported from—Japan on 10/20/41 P. F., Yokohama, Japan
(Country) (Date) (Consular Invoice Number, place, and date certified)

Plaintiff's Exhibit No. 2—(Continued)

Marks and Numbers	Quantity and Description of Merchandise	Sent to Appraiser's Stores
	Jap Yen @ .23439	
	Baggage Declaration #118151	
	22 pkgs. cont'g:	
	Silk Fabric	
	Silk Scarves (Wg. Apparel)	
	Handkerchiefs (Silk) 14 doz.	
	Stockings 3 doz.	
	Lacquerware	
	Cloisone Vases	
	Dec. Earthenware	
	3 dz. pcs. Tableware Hhd.	
	Toys, (dolls)	
	Dec. Porcelain	
	4 dz. Hhd. Tableware	
	Blown Glassware	
	Mfrs. of Silk	
	Smokers' Articles	
	(continued)	
		[Stamp]: IN APPRAISERS STORE
		[Stamp]: WEIGH
		[Stamp]: PAID Nov 12 1941. By (illegible) Cashier.

(Cut carbon paper on this line if this blank is used as copy)

Plaintiff's Exhibit No. 2—(Continued)

Cashier's Stamp—Nov. 12, 1941
To the Collector:

Duty Paid, \$192.39

I Certify that the above-described goods have been examined. (or samples taken)

Station—Apprs.

To the Inspector:

Nov 12 1941

You will dispose of goods ordered for examination as directed above,

BIRKS

To the Collector:

Examiner ~~or~~
~~Samples~~

The articles described above have been landed, released, sent to appraiser's stores, or otherwise disposed of as directed, and in apparent good order, except as noted.

and release the remainder from customs custody to or upon the order of the carrier by which the merchandise is brought to this port. All goods will be inspected, examined, weighed, gauged, measured, or stamped as directed, and return thereof made hereon.

.....
Weigher, Gauger, or
Measurer

L. C. CASIBEER,
Clerk

G. TULEEN

Deputy Collector
[48]

Plaintiff's Exhibit No. 2—(Continued)

Customs Form 7501 B
 Treasury Department
 T. D. 37789
 June 1933

Entry No.

CONSUMPTION ENTRY—
 Continuation Sheet

Importer

U. S. Customs Service

Marks and Numbers	Merchandise Packages and Description	Tariff Para- graph	Value in Foreign Money	Entered Value in U.S. Money	Duty
	Quantity			Dollars only	Dollars Cts.

Dried Fish 20 lbs.
 Jewelry

Tea 9 lbs.
 Swords 2 pcs.
 Mosquito Net

Seaweed
 Mfrs. of Cotton
 Mfrs. of Glass
 Miso
 Toys
 Mfrs. of Metal
 Metal Vase 1 pc.

Plaintiff's Exhibit No. 2—(Continued)

Marks and Numbers	Merchandise Packages and Description Quantity	Tariff Paragraph	Value in Foreign Money	Entered Value in U.S. Money Dollars only	Rate	Duty Dollars Cts.
	Lacquer Bowls 5 pcs. Jewelry					
	Sandals					
	Hair Pencils 4 pcs. Mfrs. of Silk					
	Exemptions claimed by returning American citizen: Pink & White Silk Material 15 yds.					
	Printed Silk Kimonos 4 pcs.					
	Printed House Coats 6 pcs.					
	Man's Silk Robe 1 pc.					
	Silk Stockings 2 doz.					
	Brocade Obi Material 10 yds.					
	Silk Shirts 9 pc.					
	Silk Pajamas—2 prs.					

For sale by Collectors of Customs at price of 25 cents for block of 100.

On the 4th day of May, 1942, the defendant, Charles T. Takashashi, served and filed his affidavit, in reply to plaintiff's affidavits, as follows:

[Title of District Court and Cause.]

State of Washington

County of King—ss.

Charles T. Takahashi, being first duly sworn, deposes and says: That he has read the affidavit of Roy L. Ballinger together with the affidavits of A. D. Richards and A. S. Atherton with reference to permit issued to affiant to meet passengers arriving on ship board from Japan and accompanying them through the Customs. That on the second day of November, 1941, affiant in possession of said pass met and went aboard the Japanese ship Hikawa Maru and accompanied Edward Y. Osawa through the Customs openly and in the presence of a number of Customs officials not including, however, A. S. Atherton or A. D. Richards. That affiant accompanied the said Edward Y. Osawa with the knowledge and consent of Customs officers whose names are unknown to affiant. That affiant had for a number of years followed that said practice without objection or interference on the part of the Customs officers stationed in Seattle, and that affiant at all times was within his rights and was not guilty of any violation of any Federal law.

CHARLES T. TAKAHASHI

Subscribed and sworn to before me May 4, 1942.

GEO. H. CRANDELL

Notary Public

And on the same day, May 4, 1942, the defendant, Edward Y. Osawa, served and filed his affidavit, in reply to plaintiff's affidavits, as follows:

[Title of District Court and Cause.]

State of Washington

County of King—ss.

Edward Y. Osawa, being duly sworn, deposes and says: That he has read the affidavits of A. S. Atherton, A. D. Richards, A. J. Frankel, and A. H. Koons with reference to the letter attached to the affidavits of said officers, [51] which letter is marked Exhibit A, and with reference thereto affiant alleges that on to-wit: the second day of November, 1941, while he was a passenger on the steamship Hikawa Maru and before said ship had docked at Seattle, affiant prepared an itemized list of all the articles in his possession, and that on said list the six pairs of silk stockings referred to in said letter marked Exhibit A were mentioned and declared, and that said list was caused to be delivered to a Customs officer who had boarded said ship, the delivery having been made to said officer before the ship docked.

EDWARD Y. OSAWA

Subscribed and sworn to before me May 4, 1942.

GEO. H. CRANDELL

Notary Public

On May 5, 1942, the defendant, Charles T. Takahashi served and filed a further reply affidavit as follows:

[Title of District Court and Cause.]

State of Washington

County of King—ss.

Charles T. Takahashi, being first duly sworn, deposes and says:

That he has read the affidavit of Edward Y. Osawa, and that the statements therein contained so far as they pertain to the conduct of affiant are substantially true. That at no time while passing through the Customs were there papers of any kind exchanged between said Edward Y. Osawa and affiant other than the mutual examination of a list of articles contained in Mr. Osawa's luggage, which was mutually consulted from time to time by both affiant and the said Edward Y. Osawa. That affiant met the ship [52] on the second of November in response to a telegram received via Western Union requesting affiant to bring \$200.00 in American money to pay tariff or customs fees. That continually from the time affiant reached the dock until the search was made affiant was in the immediate presence of the said Edward Y. Osawa and customs officers other than A. S. Atherton and A. D. Richards and was engaged in conversation with the said officers almost continually.

CHARLES T. TAKAHASHI

Subscribed and sworn to before me May 5, 1942.

GEO. H. CRANDELL

Notary Public

On the same day, May 5, 1942, the defendant, Edward Y. Osawa, filed a further reply affidavit as follows:

[Title of District Court and Cause.]

State of Washington

County of King—ss.

Edward Y. Osawa, being first duly sworn, deposes and says: That the ship Hikawa Maru upon which he sailed from Japan to the United States, reaching here on November 2, 1941, docked between eight A. M. and nine A.M. on said date. That on the thirty-first day of October, two days before the ship reached Seattle, affiant prepared a written declaration containing a list of all of the articles which affiant was bringing into the United States, which written declaration is Exhibit marked Number One, together with a duplicate thereof. That on the evening of November first affiant delivered the original of said declaration to the ship's purser for delivery by the purser to the United States Customs Agent who boarded the ship at Vancouver, B. C. on said first day of November. That affiant is in- [53] formed and believes that the declaration was delivered by the ship's purser to the United States Customs Officer immediately after the ship left Vancouver, B. C. on the evening of November first. That on November second the said ship berthed at Seattle, Washington, between eight and nine o'clock A.M. That affiant had abandoned his stateroom on said ship before said stateroom was visited by J. W. Stanton, inspector in the Bureau of Entomology and Plant Quarantine. That about nine forty-five Charles T. Takahashi met affiant pursuant to a telegram which affiant sent said Charles T. Takahashi

from Vancouver, B. C. requesting that the said Charles T. Takahashi meet affiants at the ship with \$200.00 in American money for the purpose of paying duty on the articles which affiant was bringing into the United States. That said Charles T. Takahashi was in the immediate presence of affiant from about nine forty-five until after affiant in company with said Charles T. Takahashi left the dock, which was approximately eleven-thirty A. M. That at no time was there an exchange of papers between affiant and said Charles T. Takahashi while affiant and said Charles T. Takahashi were on the dock or in the customs. That the only paper that affiant had during said time was a copy of the list of articles contained in the declaration, which was consulted from time to time by said Charles T. Takahashi in an attempt to locate said lost items of luggage. That said list was arranged and classified according to the luggage or package in which said articles were contained. That considerable time was consumed by reason of the fact that part of the packages were missing, and that a diligent search was made by affiant in company with said Charles T. Takahashi and certain [54] customs officers whose names are unknown to affiant. That at about eleven A.M. one of the customs officers whose name is unknown to affiant first suggested and then directed that affiant's luggage would be sent to the United States Appraiser's Office and there released and directed that affiant could take his brief case and any personal effects that he desired and leave the dock. That up until this time affiant had not seen or had

he been in the immediate presence of either United States Customs Officers A. S. Atherton or A. D. Richards. That when advised by customs officers that affiant might leave, affiant and said Charles T. Takahashi proceeded to leave the dock, affiant carrying his brief case. That then for the first time affiant saw and was restrained by said officers Atherton and Richards and by them taken into custody and searched as described in detail in an affidavit heretofore made by affiant. That affiant and the said Charles T. Takahashi finally left the dock at approximately eleven-thirty A.M.

EDWARD Y. OSAWA

Subscribed and sworn to before me May 5, 1942.

GEO. H. CRANDELL

Notary Public

That on the 6th day of May, 1942, the aforesaid petitions of the defendants, Charles T. Takahashi and Edward Y. Osawa, for the return of their private papers, etc., and their said motion to quash the indictment came on for hearing before the Court upon the showing and countershowing hereinabove set forth, and the Court having read and considered the same, and having listened to the arguments of counsel, took said matters under advisement, [55] and at the same time granted leave to counsel for defendants to file additional showing as to where said defendants were when they met at the time of the arrival of the ship Hikawa Maru.

Accordingly, thereafter, on the 8th day of May, 1942, said defendants served and filed two addition-

al affidavits, one by defendant Takahashi and one by defendant Osawa and submitted the same to the Court, the same being as follows:

[Title of District Court and Cause.]

State of Washington

County of King—ss.

Charles T. Takahashi, being first duly sworn, on oath deposes and says:

That on the morning of November 2, 1941, at no time did affiant board the ship Hikawa Maru. That when affiant reached the dock at which said ship was berthed, Edward Y. Osawa had left the ship and was on the dock.

CHARLES T. TAKAHASHI

Subscribed and sworn to before me May 8, 1942.

GEO. H. CRANDELL

Notary Public

[Title of District Court and Cause.]

State of Washington

County of King—ss.

Edward Y. Osawa, being first duly sworn, on oath deposes and says:

That on the morning of November 2, 1941, affiant had left the ship Hikawa Maru before Mr. Charles T. Takahashi met him. That affiant and the said Charles T. Takahashi met on the dock and were in each other's immediate company until the search

was made by the officers A. S. Atherton and A. D. Richards.

EDWARD Y. OSAWA [56]

Subscribed and sworn to before me May 8, 1942.

GEO. H. CRANDELL

Notary Public

Thereafter, on the 15th day of May, 1942, after considering the two additional affidavits of said defendants, together with the previous showing made by both parties, the Court denied each of said petitions and defendants' motion to quash, and entered the following orders thereon:

[Title of District Court and Cause.]

This matter having come on for hearing on the 6th day of May, 1942, the defendant being present in open Court and represented by his counsel George H. Crandell and Samuel B. Bassett, the Court having heard argument and being fully advised in the premises, it is hereby

Ordered, adjudged and decreed that the petition is overruled and denied.

Done in open court this 15th day of May, 1942.

LLOYD L. BLACK

United States District Judge

Presented by:

GERALD SHUCKLIN

Assistant U. S. Attorney

[Title of District Court and Cause]

This matter having come on for hearing on the 6th day of May, 1942, the defendant being present in open Court and represented by his counsel George H. Crandell and Samuel B. Bassett, the Court having heard argument and being fully advised in the premises, it is hereby ,

Ordered, adjudged and decreed that the petition is overruled and denied.

Done in open court this 15th day of May, 1942.

LLOYD L. BLACK

United States District Judge

Presented by:

GERALD SHUCKLIN

Assistant U. S. Attorney [57]

[Title of District Court and Cause.]

This matter having come on for hearing on the 6th day of May, 1942, the defendants being present in open Court and represented by their counsel George H. Crandell and Samuel B. Bassett, the Court having heard argument and being fully advised in the premises, it is hereby

Ordered, adjudged and decreed that the defendants' motion to quash indictment be, and it hereby is, overruled and denied.

To all of which defendants except.

Exception allowed.

Done in open court this 15th day of May, 1942.

LLOYD L. BLACK

United States District Judge

Presented by:

GERALD SHUCKLIN

Assistant U. S. Attorney

TRIAL

Be it further remembered that on the 29th day of September, 1942, at the hour of 10:00 a. m., the above entitled and numbered cause came regularly on for trial in the above entitled court before the Honorable Lloyd L. Black, one of the Judges of the above entitled Court, sitting with a jury.

The plaintiff appeared by J. Charles Dennis, Esq., United States District Attorney, and Thomas Durham, Esq., Assistant United States Attorney, its attorneys and counsel;

The defendant Charles T. Takahashi appeared by George H. Crandell, Esq., and Samuel B. Bassett, Esq., his attorneys and counsel;

The defendant Edward Y. Osawa appeared by Tracy E. Griffin, Esq., his attorney and counsel.

[58]

All parties having signified their readiness to proceed, a jury was duly impanelled and sworn.

Mr. Dennis, for the plaintiff, made an opening statement to the jury.

Mr. Crandell followed with an opening statement for defendant Takahashi.

Mr. Griffin followed with an opening statement for defendant Osawa.

It was orally stipulated between all the parties that the testimony given upon the previous trial of the cause by Francis Hoague, Fred G. Heins and Frederick Wilhelm, for the Government, and of Mrs. S. Kawaguchi, for the defendants, may be read to the jury on the present trial in lieu of them being present.

ALBERT D. RICHARDS,

a witness called on behalf of the Government, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dennis:

My occupation before April 15, 1942, was Customs Agent in the United States Treasury Department. I was stationed in Seattle and had been in the Customs service a little better than eleven years. I was such Customs Agent on November 2, 1941, and acting in course with my duty. On that date I saw the defendant Takahashi and the defendant Osawa. I was at the Great Northern pier on the arrival of the Japanese Steamship Hikawa Maru. Another Customs agent, Mr. Atherton, was with me and was with me all that day. I saw Mr. Osawa shortly after nine o'clock on the morning of November 2. Mr. Atherton and I were working together within speaking distance and sight of each other.

(Testimony of Albert D. Richards.)

It was at the Great Northern pier that I saw Mr. Osawa.

Q. Now, then, explain what a Custom's baggage enclosure is?

A. For the convenience of Custom's inspection, examining baggage of incoming persons from foreign countries, they set up what is known as an enclosure or baggage enclosure for Customs purposes. All personal baggage is taken from the ship and stacked [59] in tiers under their initials on the pier, and the inspectors in turn take the baggage separately and *go the* place where the baggage is stacked, inspect it and then put a stamp on it so that can be passed from the baggage enclosure, so that the guard on the gate will know the baggage has been inspected.

Inspectors from other Government agents and incoming passengers and persons who have a special permit are allowed within the baggage enclosure. I saw defendant Takahashi within the Custom's enclosure. He was not a passenger on the ship. He was with Mr. Osawa. It was about ten o'clock when I saw Mr. Takahashi and Mr. Osawa together. They were in the baggage enclosure close to the place where Mr. Osawa's baggage had been stacked up on the pier. I was standing close to the door of the reception room, which is in the baggage enclosure, on the pier. Mr. Atherton was either standing with me or close by. I saw Mr. Takahashi and Mr. Osawa carrying on a conversation and then pass some paper back and forth between them. I

(Testimony of Albert D. Richards.)

don't know what the paper was. I kept Mr. Takahashi in my vision, watched him the rest of the time he was on the pier. After Mr. Osawa had arranged for his baggage to be shipped, Mr. Takahashi started to leave the pier. I stopped him, the two men, identified myself as a Custom's agent and requested them to come into the reception room. After going into the reception room I took Mr. Osawa into the washroom, where I searched him, took his briefcase which he was carrying, took certain papers from him, and after I had completed that search I took Mr. Osawa back and took Mr. Takahashi into the washroom where he was likewise searched and certain papers taken away from him at that time. Mr. Atherton was with me.

Q. What did you find in the briefcase? What briefcase was that?

Mr. Crandell: Just a minute. We object to that as incompetent, irrelevant and immaterial, it being a violation of the Constitution.

The Court: Do I understand that you, as attorney for Mr. [60] Takahashi, can object to what was found in Mr. Osawa's briefcase?

Mr. Crandell: I am objecting to the introduction of any evidence for which I made a motion myself. I think I have that right.

The Court: Are you attorney for Mr. Osawa or not for Mr. Osawa?

Mr. Crandell: I am not.

The Court: The objection is overruled.

(Testimony of Albert D. Richards.)

Mr. Griffin: The defendant Osawa objects to the testimony along that line, as to the particular case, as to what he found in the briefcase, on the same ground.

The Court: He may without saying what was in it, the contents, he may merely identify what was found.

Mr. Griffin: May I present one point further, The objection is made upon the ground heretofore presented as to the constitutional rights of the defendant Osawa.

The Court: The objection is overruled, but the witness is directed merely to identify by general description, without setting forth what the contents were, further than a mere general identification.

A. There were a number of files in the briefcase and letters addressed to C. T. Takahashi & Company.

Q. (By Mr. Dennis): Now then did you find certain papers in the possession of Mr. Takahashi at that time?

Mr. Crandell: To which the defendant Takahashi objects as incompetent and immaterial, being personal papers the taking of which was violative of the rights of the defendant Takahashi.

Mr. Griffin: And the defendant Osawa objects upon the same ground, inasmuch as I must assume the papers to identify his part in a conspiracy, in which Mr. Osawa is named as a party.

Mr. Crandell: My authorities are those presented at the [61] time of the motion.

(Testimony of Albert D. Richards.)

The Court: You, as attorney for Mr. Osawa, are objecting to what was found on Mr. Takahashi?

Mr. Griffin: Yes, your Honor.

The Court: The objection of Mr. Osawa is overruled. The objection of Mr. Crandell is likewise overruled.

Mr. Crandell: Exception.

The Court: Exception allowed.

Mr. Griffin: In each instance?

The Court: The same.

Q. (By Mr. Dennis): Referring to plaintiff's Exhibit #1—

Mr. Griffin: That would be for identification, I take it.

Mr. Dennis: I am using. may it please the Court, the same numbers as in the previous trial.

The Court: Will it be for identification.

Mr. Dennis: Yes, of course, but I am using the same numbers.

The Court: Exhibit #1 for identification.

Q. (By Mr. Dennis): I will ask you where you found that if you did find it?

A. I don't recognize that. I don't believe I ever saw that before.

Q. Referring to plaintiff's #1, #2, #3, #4, #5, #6, #7 and #8, I will ask you if you have seen any of them before?

Mr. Crandell: I object to that, and especially to Exhibit #1. The witness says he never saw Exhibit #1.

(Testimony of Albert D. Richards.)

The Court: Objection overruled.

Mr. Crandell: Exception.

A. I don't recall seeing any of these Exhibits.

Mr. Dennis: Referring to plaintiff's Exhibit #10.

Mr. Griffin: I take it, Mr. Dennis, you are still referring to Exhibit #10 for identification? [62]

The Court: It will be understood that all of these exhibits are for identification until the Court admits them in evidence.

Q. (By Mr. Dennis): I will ask you if you have ever seen them before?

A. Yes, sir.

Q. I will ask you where you saw them?

A. Those I took from the person of Mr. Takahashi at the time I searched him, November 2.

Mr. Crandell: The same objection. I wonder if we may not have an objection with an exception to all reference to these items without making it specifically?

The Court: It may be understood that all of the papers which Mr. Richards may testify he took from Mr. Takahashi on the pier are inquired of over your objection that you are taking exception to the admission of any of the—well we will not tackle the admission but it will be understood that you are taking exception to any questions and to the allowance of the witness to answer.

Mr. Crandell: It will save interruption.

The Court: When the exhibits are offered in

(Testimony of Albert D. Richards.)

evidence, if they are, then you will be required to object and except.

Mr. Crandell: I will do that.

Mr. Griffin: May I be considered to be in the same position? I am objecting on the part of Mr. Osawa.

The Court: It will be understood that you are objecting. The Court is not implying that Mr. Osawa has any right to object to what may have been found upon Mr. Takahashi. Your objection will be assumed to run to all of this line of questioning.

Mr. Dennis: Now, may I get the answer?

A. That is one of the papers I found in Mr. Takahashi's pocket at the time I searched him on November 2 at the pier. [63]

Exhibits #11, #12, #13, #14, #15, #16, #17 and #18 are papers that I took from Mr. Takahashi's pocket on November 2 on the pier. At a later date I had a further conversation with defendant Osawa. It was at the King County jail, Seattle, Washington, and I had plaintiff's Exhibits #14, #15 and #16 with me. I asked Mr. Osawa if he had written these letters, and a number of other letters I had in my possession at that time; and when he admitted that he had written them I asked him where he was at the time he had written them and he said he was in Tokyo, Japan. I asked him if he had ever been in Shanghai on the trip he returned from. He said "no"; he had intended to go to Shanghai to book passage to return that way, but being unable to do that, he stayed in Tokyo and

(Testimony of Albert D. Richards.)

had never been to Shanghai during the trip and he returned these letters to Tokyo. He said he mailed the letters to Mr. Takahashi as a progress report.

Mr. Dennis: At this time, may it please the Court, I offer this Exhibit #10 in evidence. I will offer them all in evidence at the same time or each separately, whatever is best to do.

Mr. Griffin: It would save time to offer them #10 to #18.

Mr. Dennis: I offer these Exhibits #10, #11, #12, #13, #14, #15, #16, #17 and #18.

Mr. Crandell: To which the defendant, C. T. Takahashi, makes the basic objection.

Mr. Griffin: To which the defendant Osawa makes the basic objection as well as an objection upon the ground and for the reason that the indictment does not state facts constituting a crime and particularly with reference to Exhibits #14, #15 and #16, being letters dated July 5, July 12 and July 15, upon the ground and for the reason that they are incompetent, irre- [64] levant and immaterial and inadmissible as proving, or tending to prove, a conspiracy as charged in the indictment, a conspiracy made the year 1940 at a time when there was not in existence any administrative rule having the effect of law.

The Court: #14, #15 and #16 dated in July, 1941, under the testimony admitted to have been written by Mr. Osawa, the defendant, under the testimony, returned months after the regulation went into effect, are admitted, and the objections

(Testimony of Albert D. Richards.)

of Mr. Osawa are overruled. The objection of Mr. Takahashi is overruled.

Mr. Griffin: Exception.

Mr. Crandell: Exception.

The Court: The other Exhibits, #10, #11, #12, #13, #17 and #18 are admitted in evidence. The objection of Mr. Takahashi is overruled.

Mr. Crandell: Exception.

The Court: The objections of Mr. Osawa are overruled. The exception to each defendant and to each ruling and as to each exhibit are allowed. I think I have covered all the offers.

The Court: So there will be no question, Exhibits #10 to #18 inclusive are admitted in evidence and the objections are overruled and the exceptions allowed.

Various letters marked Plaintiff's Exhibits #10 to #18 inclusive admitted in evidence.

The letters of July 5 and July 12, 1941, were read to the jury.

The witness, Mr. Richards, is temporarily withdrawn.

E. R. STINE,

a witness called on behalf of the Government after having been first duly sworn, testified as follows:

[65]

Direct Examination

I am Superintendent of the Western Union Telegraph Company in Seattle.

(Testimony of E. R. Stine.)

Referring to plaintiff's Exhibit #22, that is a record of cable registration for C. T. Takahashi & Company. The word "N E W Y R" on one corner is a contraction that is used as a cable address by C. T. Takahashi & Company. By "cable address" is meant a code address that they register with us and we have the key to that code address so that anything that reaches Seattle addressed to "N E W Y R" would be delivered to C. T. Takahashi & Company.

Exhibit #22 admitted in evidence without objection.

Record of cable registration admitted in evidence and marked Plaintiff's Exhibit #22.

Referring to plaintiff's Exhibit #23, that is a record of cable registration for China Import and Export Company, Seattle. It is a code letter meaning any cables addressed to "C I E C O" here would be delivered to China Import and Export Company.

Exhibit #23 offered in evidence.

Mr. Crandell: When was this authorized?

A. The first registration was October 15, 1927.

Plaintiff's Exhibit #23 admitted without objection.

The code registration admitted in evidence and marked Plaintiff's Exhibit #23.

Q. (By Mr. Dennis): Referring to plaintiff's Exhibit #5, what is that?

A. That is the original of a cable delivered to us in San Francisco, addressed to "N E W Y R", Se-

(Testimony of E. R. Stine.)

attle, originating in Tokyo. It was sent June 27 and was delivered by our office to [66] C. T. Takahashi & Company on the morning of June 28.

Referring to plaintiff's Exhibit #6, that likewise is the original of a cable turned over to us by the RCA in San Francisco from Tokyo, addressed "N E W Y R", which is C. T. Takahashi & Company, Seattle. It was delivered by our office to C. T. Takahashi & Company on June 28.

Referring to plaintiff's Exhibit #7, that is a cable from Tokyo, sent on July 5 to C. T. Takahashi & Company, Seattle, and delivered on July 5.

Referring to plaintiff's Exhibit #8, that is a cable from Tokyo, sent on July 8 to C. T. Takahashi & Company, Seattle, and delivered to them on July 8.

Plaintiff's Exhibits #5, #6, #7 and #8 offered in evidence.

Mr. Griffin: The defendant Osawa objects as incompetent, irrelevant and immaterial and so far as he is concerned there is no evidence in this case that any of these exhibits were sent from Tokyo by the defendant Osawa or that he had any knowledge thereof.

The Court: The objections are overruled.

Mr. Griffin: Exception.

Cablegrams previously identified admitted in evidence and marked Plaintiff's Exhibits #5, #6, #7 and #8.

(Testimony of E. R. Stine.)

Cross Examination

By Mr. Bassett:

In reference to Exhibits #22 and #23, "N E W Y R" is the code name of C. T. Takahashi & Company, and "C I E C O" is the code name for the China Import and Export Company. It is not uncommon for firms engaged in the import and export business to employ code names of that type. The purpose of using code names [67] is to keep down expenses.

By Mr. Griffin:

Code books are published like dictionaries. We do not carry all of the code books. There are probably fifteen such books in general use and we have probably five or six. Anyone having a book containing the code used can decipher the cablegrams.

Redirect Examination

By Mr. Dennis:

These codes are also found in the library.

Referring to plaintiff's Exhibit #24, that is an after-hour delivery instruction from the China Import and Export Company, also the C. T. Takahashi Company.

Exhibit #24 admitted in evidence.

After-hour delivery instructions of China Import and Export Company and C. T. Takahashi & Company admitted in evidence and marked Plaintiff's Exhibit #24.

(Witness excused.)

Mr. Bassett: Mr. Dennis and I have stipulated that the word "gunbu" means military authorities.

The Court: The jury will understand that in the letters that they have heard the word "gunbu" is used, that that means "military authorities".

Mr. Dennis: I will read the letter of July 16, 1941.

(Thereupon Mr. Dennis read the exhibit to the jury.)

Mr. Dennis then read to the jury the translation of the confirmation of telegrams from Mikuni Shoko Company Limited to "N E W Y R", C. T. Takahashi & Company, Seattle, Washington, being Exhibit #10. [68]

Mr. Dennis then read Exhibit #11, being a translation of telegram sent June 28, 1941, by Mikuni Shoko Company Limited, Tokyo, Japan.

Mr. Dennis then read Exhibit #12, being confirmation of telegram Mikuni Shoko Company Limited, Tokyo, Japan, to "N E W Y R" Seattle, sent July 5, 1941.

Mr. Dennis then read Exhibit #13, dated July 8, 1941, to "N E W Y R", Seattle.

ALBERT D. RICHARDS,

recalled after having been previously sworn, testified as follows:

Direct Examination

Mr. Dennis: I will ask you what Plaintiff's Exhibit #9 is, and where you found it?

(Testimony of Albert D. Richards.)

A. This is a letter which was taken from a briefcase carried by Mr. Osawa at the time he was searched on the morning of November 2 at the pier. After the search Mr. Takahashi and Mr. Osawa were allowed to proceed from the pier. I next saw Mr. Takahashi about ten o'clock on the evening of November 2 at his place of business, 212 Fifth Avenue South, Seattle. At this time Mr. Osawa was with Mr. Takahashi and Mr. Atherton accompanied me to this place of business. I asked Mr. Takahashi if he would come over to the office of the Supervising Custom's Agent, where Mr. Atherton and I would like to talk to him. He stated that he would, and he and Mr. Osawa came to the office of the Supervising Custom's Agent at 217 Federal Office Building. Mr. Osawa was not present at the time we talked to Mr. Takahashi. Only Mr. Atherton, Mr. Takahashi and myself were present.

Q. What was said by Mr. Takahashi and what was said by you, and what was said by Mr. Osawa and Mr. Atherton?

Mr. Griffin: I object as incompetent, irrelevant and immaterial and not binding on the defendant Osawa. [69]

The Court: The jury will be instructed that any conspiracy that existed terminated on the dock at the time of the search on November 2, 1941, and therefore any conversation by any defendant will be considered by the jury as against that particular defendant. And so any statement by Mr. Takahashi

(Testimony of Albert D. Richards.)

after the morning of November 2, 1941, made in the absence of Mr. Osawa is only to be considered as against Mr. Takahashi.

The jury will be further instructed that a conspiracy is a charge of a criminal partnership; and if the jury is convinced, after it has heard all the evidence, beyond a reasonable doubt that a conspiracy did exist as charged in the indictment, and is further convinced beyond a reasonable doubt that the defendants, or either of them, were members of that conspiracy, then any statements made by any member of the conspiracy, even in the absence of such defendant, would be binding upon the defendant, upon the theory that one is a member of a partnership he is liable for what the partner says or does.

Mr. Griffin: I will take an exception, if I may, for the last portion of your Honor's statement as to the binding effect of any statement after the separation in time, the absence of the alleged co-conspirator.

The Court: The jury will further understand that if conversations take place with one defendant in the presence of another, after the search on November 2, 1941, then the jury will be later instructed as to what the rule is as to such conversations.

Mr. Takahashi said that he was in the import and export business and that the main commodities that he had exported were scrap steel, scrap rubber, scrap bags and used oil tanks to the Orient. I asked him

(Testimony of Albert D. Richards.)

at that time if he had ever had applications for export licenses rejected and he said he had a [70] number rejected. I asked him where these applications were and he said in his office at 215 Fifth Avenue South, and he agreed at that time to get me the rejected applications the next day.

I asked him also why he used the name of China Import and Export Company as well as C. T. Takahashi & Company. He stated that in doing business with China or any persons who might be prejudiced against the Japanese, that he would use the name of China Import and Export Company, thereby getting around the name "Takahashi" which was Japanese.

To the best of my recollection there was no mention made of the three oil tanks on the night of November 2. He did mention that he shipped a number of used oil tanks prior to that time, to Japan.

The next time I saw Mr. Takahashi was about ten o'clock on the morning of November 3. There was present Mr. Atherton, Mr. Takahashi and Mr. Masuda, who was Mr. Takahashi's attorney.

Q. What conversation did you have at that time?

Mr. Griffin: Same objection.

The Court: Same ruling.

A. I asked Mr. Takahashi at that time if I might see the rejected export applications which he had told me the night before were in his office. He brought out a group of rejected applications for various types of merchandise and among the ap-

(Testimony of Albert D. Richards.)

plications I saw one dated April 16 for three new, dismantled steel 80,000-barrel storage tanks, and another one dated on July 16 for three dismantled storage tanks, the one on April 16 headed the consignee as Mikuni-Shoko Company of Tokyo, Japan, and the one on July 16 headed the Hua Hsin Company of Shanghai, China, as consignee.

I asked Mr. Takahashi if these were the same three tanks [71] in the rejected application of April 16 and the rejected application of July 16, and he stated that they were; that at the time the application had been rejected by the State Department he had gotten a new customer in China, the Hua Hsin Company, and he had resold the tanks to the Hua Hsin Company, and that there was no connection between the Mikuni-Shoko Company and the Hua Hsin Company of Shanghai.

Referring to plaintiff's Exhibit #21, that is one of the rejected applications given me by Mr. Takahashi on the morning of November 31, 1941.

Referring to plaintiff's Exhibit #19, that is the rejected application of C. T. Takahashi & Company for permit to export three dismantled steel storage tanks and accessories for re-erection purposes, given me by Mr. Takahashi on the morning of the 3rd of November.

Plaintiff's Exhibit #19 offered in evidence.

Mr. Griffin: The defendant objects on the ground that the same is incompetent, irrelevant and immaterial and has no tendency to prove, as shown on the face of the document itself, any connection of the

(Testimony of Albert D. Richards.)

defendant Osawa with any charge laid in any count of the indictment.

The Court: Objection overruled.

Exhibit #19 is admitted.

The application admitted in evidence and marked Plaintiff's Exhibit #19.

Mr. Dennis: I now offer in evidence at this time #21.

Mr. Griffin: I have the same objection to #21 as just stated to #19.

The Court: Objection overruled and Exhibit #21 is admitted.

Mr. Griffin: Exception to this ruling, please.

The Court: Exception allowed.

Application admitted in evidence and [72] marked Plaintiff's Exhibit #21.

Mr. Dennis: Referring to plaintiff's Exhibit #19, I will ask you if anything was said in regard to certain writing then, at that time?

A. Yes. In looking over this application, after the name of the applicant on Exhibit #19, which is typewritten in "C. T. Takahashi" there is written in pencil a change in there and where the name Mikuni-Shoko Company is on the application. The writing is rather dark. I asked Mr. Takahashi why the pencil notation all the way through,—he stated after that application had been rejected and he got the new customer in Shanghai he used the application of April 16 as a guide and had his stenographer write in the name of the purchaser and the new ad-

(Testimony of Albert D. Richards.)

dress on this application; that she took the new application and filled it out accordingly using pencil notation rather than the typewritten notation.

Q. And referring to the one at the top of the page there was that mentioned?

A. He stated the reason he had written "China" in typewriting in—inserting the name of the country of destination in the first application in typewriting "Japan" he stated the new application was in China so therefore he had to put in the word "China" in the new application when it was made out.

(Thereupon Mr. Dennis read Exhibit #19 to the jury.)

Q. Was there any talk with Mr. Takahashi in regard to the application for the license dated July 16, 1941?

A. Yes. One of the main things that I talked to him about was why Leo Nye Sing had signed the application rather than Takahashi. He stated that his new customer was in China and that he had taken for granted, since the State Department had rejected his application of April 16, that the United [73] States had embargoed all tank shipments to Japan, so he got this customer in China and asked Leo Nye Sing, who is known by the American name Willie Leo to sign the application to make it look thoroughly Chinese. He said the new customer was Hua Hsin Company, Shanghai, China, and he said Leo Nye Sing was a Chinese friend of his, that he

(Testimony of Albert D. Richards.)

had known him for a long time and that he had him sign this particular application. He said that the application, Exhibit #21, had been rejected by the State Department, and Exhibit #19 had also been rejected by the State Department.

I had another conversation with Takahashi, one on the 3rd of November in the presence of Mr. Atherton and Mr. Masuda, relative to this application. Mr. Atherton, Mr. Takahashi, Mr. Masuda and myself were present.

Q. I will ask you what was said to Mr. Takahashi and what he said to you?

Mr. Griffin: The same objection as heretofore.

The Court: The same ruling.

Witness continuing: At that time I asked Mr. Takahashi if there was any connection between the Mikuni-Shoko Company of Tokyo, Japan, and Hua Hsin Company of Shanghai, China, and if the three tanks in both applications were identical. He stated there was absolutely no connection between the Hua Hsin Company in China and the Mikuni-Shoko Company of Tokyo. He volunteered at that time the information that he did quite a bit of his business with Japan by long distance telephone, that it cost \$8.00 a minute to talk to Japan, and it took so long to get over the Japanese formalities before getting down to business on his own that his telephone bills would run as high as \$1,000.00 a month long distance to Japan. He stated that he had shipped to Mikuni-Shoko Company prior to that time some thirty- [74] five dismantled used oil storage tanks to

(Testimony of Albert D. Richards.)

Japan, that the only business he had ever done with Mikuni-Shoko Company was in oil, steel and tanks. To the best of my recollection, I believe he stated he received the order for the new steel storage tanks the 1st of December, 1940, and at that time the order was for eleven storage tanks but due to priorities on steel and other obstacles he was able only to place the order for three tanks and that he had placed this order through the Sonken Galamba Supply Company of Kansas City, Kansas, who in turn had placed the order with the Graver Tank Company of East Chicago, Indiana. I asked him how the tanks were to be paid for and he stated through a letter of credit which he had received from Mikuni-Shoko Company in payment of the thirty-five used storage tanks; that he had accumulated a surplus of some \$71,000.00, which was to be applied on the payment of the three new storage tanks. I do not recall having had any conversation with Edward Y. Osawa other than the one on the pier. I asked Mr. Takahashi to allow me to see some correspondence. That was on the next occasion between November 3 and the latter part of November. He handed me certain correspondence. The correspondence was taken to my office, where photostats were made and the correspondence was returned to Mr. Takahashi.

Mr. Dennis: These may be identified as plaintiff's Exhibit #34 for identification.

Referring to plaintiff's Exhibit #34, I have never seen the originals. The original is in Japan

(Testimony of Albert D. Richards.)

presumably and this is a photostat copy of the copy of the original letter which was in the files given to me by Mr. Takahashi. I received the carbon copy from the files and had that photostated.

Referring to Government's Exhibit #35, this is a photostatic copy of the carbon copy of a letter received from one of the [75] files given me by Mr. Takahashi at his office. After the photostatic copies were made the originals were returned to Mr. Takahashi.

Plaintiff's Exhibits #34 and #35 admitted in evidence.

The letters admitted in evidence and marked Government's Exhibits #34 and #35.

(Thereupon Exhibits #34 and #35 were read to the jury by Mr. Dennis.)

Mr. Dennis: May it please the Court, may I say this it has been agreed that the two words which appear in these letters have certain meaning. It is stipulated between the Government and defendants that the word "Chigun", however it is pronounced, stands for "Navy" and the word "Rikugun", however it is pronounced, means "Army".

Mr. Crandell: That is the stipulation.

Cross Examination

By Mr. Crandell:

When I talked with Mr. Takahashi I asked him if the three tanks which were described in Exhibit #19 were the same identical tanks as described in Exhibit #21 and he said that they were the same

(Testimony of Albert D. Richards.)

tanks, and I investigated and found that he had told the truth. I also asked him about where these tanks were manufactured and he told me it was by the Graver Tank Company, East Chicago, and I investigated and found that was true. He told me that the tanks had been ordered through the Sonken Galamba Supply Company, Kansas City, Kansas, and I investigated that and found it was true. He told me that he had previously been engaged in the export and import business for along time and I investigated and found that was the truth. He told me that he had rather recently an order for some thirty-two or [76] thirty-five tanks and I investigated that statement and found it was true.

Referring to Exhibit #19, when I saw the word "China" written in pencil I was naturally curious.

Exhibit #19 handed to the jury for scrutiny.

When I asked Mr. Takahashi regarding the pencil marks he assured me that this was a form he had used in a former application that had been rejected and that he had taken this rejected form and told his girl in his office what changes to make in preparing a new application.

Cross Examination

By Mr. Griffin:

I never met or talked to Mr. Osawa prior to November 2, 1941. On November 2 and on November 3 I met with Mr. Takahashi and his attorney, Mr. Masuda, in Takahashi's office. He there advised me that he had had several applications rejected by the

(Testimony of Albert D. Richards.)

State Department. I inquired for, and he brought out, his files. He had a group of ten or twelve rejected applications which he gave me. He consulted with his attorney before he gave them to me and his attorney, Mr. Masuda, told him he saw no objection in allowing me to take the applications. No threat had been made by me at this time. It was some time between November 3 and November 15 that Exhibits #34 and #35 were delivered to me. I refer, of course, to carbon copies from which these photostats were made. There were no threats on my part at that time. In addition to these Exhibits #34 and #35 there was also given to me three files, which I took to my office and examined, and certain papers in those files were photostated. I inquired from Mr. Takahashi why he had used the name "China Import and Export Company", and was curious why they had not used the name "C. T. Takahashi & Company". [77]

Referring to Exhibit #19, Mr. Takahashi explained that the name "Ewers" on it was an attorney in Washington, D. C., who had drawn the application. I did not check that statement, because I believed it was true. I investigated and found that Mr. Takahashi had been using the name "China Import & Export Company" since January 20, 1927, on which date he had registered it in the Clerk's office of the Superior Court of the State of Washington for the County of King, as by law required.

(Witness excused.)

WILLIE LEO,

a witness called on behalf of the Government, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dennis:

Q. What is your name, please?

A. Willie Leo; Leo Nye Sing, the Chinese name.

Q. Your Chinese name is what?

A. Leo Nye Sing.

I was in the import and export business from 1935 up to the time of the war. I ceased that business the first of this year. From April 1 to August 31 I rented a service station. Now I am a coppersmith trainee. The name of my import and export business was "China Mutual Importing Company". It has no connection with the China Import and Export Company. I had known the defendant Takahashi since between 1925 and 1926.

Referring to Exhibit #21, that looks like my signature. I have no recollection of any dealing in steel tanks. I have never had any dealings with Hua Hsin Company, 320 Szechuen Road, Shanghai, and don't know of them. I had no dealings with three complete new steel dismantled storage tanks and accessories for [78] erection purposes to be shipped to the Hua Hsin Company, and don't know anything about it. I am not a member of the China Import and Export Company. There were some arrangements made between Mr. Takahashi and myself on a commission basis, but not in regard to these three tanks. I only remember of signing one appli-

(Testimony of Willie Leo.)

cation for Mr. Takahashi, which consisted of 25,000 ball bearings.

Referring to plaintiff's Exhibit #20, that is the application that I remember signing. That was destined for Shanghai instead of Manchuria, as I recollect. When I signed the application Mr. Takahashi and I were both busy and I was told by Mr. Takahashi that it was to be destined to Shanghai. I had a conversation with Mr. Takahashi about how much I was to receive. It was three per cent of the net profits.

Cross Examination

By Mr. Crandell:

It was about 1937 that I made the first arrangement with Mr. Takahashi to take part in his China export business. Exhibit #20 bears my signature. I would say that I am positive that it is my signature.

I would also say that Exhibit #21 also bears my signature, but I have no recollection of signing it.

Q. Then why did you say it was your signature, if you can't remember?

A. Well, I don't remember such items.

Q. You don't remember such an item?

A. That is signing such an item.

Q. You mean you don't remember of a transaction involving the sale of three tanks?

A. That is right.

Q. Three tanks that are valued at about \$90,000.00, where [79] you were to get three per cent

(Testimony of Willie Leo.)

commission on the transaction? You don't remember that at all? A. No, I don't.

At the time of defendant's arrest I was interviewed by officers Atherton and Richards in their office. Mr. Atherton did not tell me at that time that if I were a party to that transaction I would be arrested. I believe it was a little bit later that he told me that I would be implicated in a conspiracy case. I don't remember whether they said I would be involved at the same time they were showing me the application (Exhibit #21) or not. I didn't believe the officers when they told me, in substance, that if I were involved in this transaction relating to the three tanks I would be involved in a conspiracy charge. I thought they were fooling. I didn't exactly deny to the officers that I ever seen Exhibit #21. I said to both Mr. Atherton and Mr. Richards that it was my signature. I did not say to them that I had signed it without knowing what it was. I told them that it looks like my signature, but I didn't recall signing for an application for three tanks.

(Witness excused.)

Mr. Dennis: The next will be the reading of these depositions of these former witnesses.

The Court: All right. You may proceed. I suggest for the ease of reading, you may make some one a substitute for the witness. It will be easier for the jury to follow.

The jury may be advised that this is a typewritten

copy of the testimony of the witness Francis Hoague previously taken in this case. Francis Hoague apparently is not available and it has been stipulated between the parties that such testimony may be read at this time. Mr. Durham will impersonate Francis Hoague. The jury will understand, I guess, what that means. [80] They are to try to imagine that Mr. Durham is Francis Hoague.

(The deposition, in the nature of testimony given at the former trial, was then read as follows:)

FRANCIS HOAGUE

was called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

My name is Francis Hoague. I reside at Arlington, Virginia. I am in the Office of the Information Section of the Board of Economic Warfare. I have brought with me certain official files and records of my department. These records formerly belonged to the Department of State, and on September 25 were transferred to the Board Defense Board.

Plaintiff's Exhibit #29, parts 1 to 5, are official records of the Board of Economic Warfare.

I brought records concerning the China Export and Import Company and C. T. Takahashi & Company.

Mr. Dennis: I offer Exhibit #29 in evidence upon the present trial.

(Deposition of Francis Hoague.)

The Court: Parts 1, 2 and 3 of Exhibit #29 are admitted. Parts 4 and 5 are rejected.

I brought with me in relation to the China Export and Import Company only the application for an export license to ship three tanks, and also the application of C. T. Takahashi to export tanks to Japan.

The Court: The jury will now understand that Mr. Durham has become someone else, Fred G. Heins.

(The testimony of Fred G. Heins was read to the jury as follows:)

FRED G. HEINS,

was called as a witness on behalf of the plaintiff, being first [81] duly sworn, testified as follows:

Direct Examination

My name is Fred G. Heins and I reside in Wood Acres, Maryland. I am at the present time Acting Assistant Chief of the Commodity License Division of the Board of Economic Warfare. I was formerly in the State Department, Head of the Iron and Steel Section in the Division of Controls. My duty was to examine applications for licenses to export iron and steel and to take action thereon.

Referring to part #1 of Exhibit #29, I acted on that application. Referring to symbols HT-26-R, HT is the symbol for the tanks, 26 is the number for that particular rejection, and the R indicates it was

(Deposition of Fred G. Heins.)

a rejection. The initials "FGH" indicated that I rejected it.

Cross Examination

By Mr. Crandell:

The rejection is dated July 25, 1941, and at that time we did issue permits to export similar products to China.

Referring back to April 24, when there was a rejection for a permit to ship to Japan, I cannot say whether at that time we did issue permits for the shipment of similar products to Japan to other American concerns, because I was not employed in the Department until about May 1.

Exhibits #1, #2, #3 and #4 were offered in evidence.

The Court: Exhibits #1, #2, #3 and #4, if not already admitted, are now admitted.

(Witness excused.)

Cablegrams admitted in evidence and marked Plaintiff's Exhibits #1, #2, #3 and #4.

A. S. ATHERTON,

a witness called on behalf of the [82] Government, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dennis:

My name is A. S. Atherton. I am a United States

(Testimony of A. S. Atherton.)

Customs Agent, and was such on November 2, 1941, located in Seattle.

On the morning of November 2, 1941, I was on the Great Northern dock in Seattle. At that time I saw defendants Charles T. Takahashi and Edward Y. Osawa. I saw Osawa and found that he was a passenger coming in on that ship, the Japanese Motorship "Hikawa Maru", which had arrived here that morning. A little while after I saw him I observed the defendant Takahashi in the baggage enclosure on the dock in company with Osawa. They were talking together. I observed them for some time thereafter, and about 10:30 or a quarter to eleven they started to leave the dock. That morning I was accompanied by Customs Agent Richards. When the two defendants started to leave the dock we stepped up and introduced ourselves as Customs Agents, and took them into the waiting room, which adjoins the baggage enclosure. At that time Mr. Takahashi told us his name and the fact that he was the proprietor of C. T. Takahashi & Company and also the China Import and Export Company, and said that he had come down to meet Mr. Osawa, who was his Manager, and who had returned on this ship.

We left Mr. Takahashi in the waiting room and took Mr. Osawa into the adjoining washroom, where he was searched. And after we searched Mr. Osawa, he was taken out in the waiting room and Mr. Takahashi was taken into the washroom and searched.

The City of Seattle was the port of entry of the boat to the United States.

(Testimony of A. S. Atherton.)

Upon the search of Mr. Osawa I found some documents on his [83] person. Exhibit #9 was taken from Mr. Osawa's briefcase.

Exhibit #9 was offered in evidence.

Mr. Griffin: To which the defendant Osawa objects, and particularly upon the basic objection heretofore made upon the constitutional grounds.

Mr. Crandell: Our objection would be the fact it was not a matter that was in our possession or that we can be charged with. In other words, they took something off a stranger to us.

The Court: After argument, the Court will reserve a ruling as to Exhibit #9.

The Clerk: Government's Exhibit #36 marked for identification.

Mr. Dennis: Referring to Government's Exhibit #36, I will ask if you have seen that before?

A. That was in Mr. Osawa's briefcase at the time I have described, and obtained by me at that time during my search.

Mr. Dennis: I offer Exhibit #36 in evidence.

Mr. Griffin: The defendant Osawa objects upon the basis of the objection heretofore made; and, second, that it is hearsay so far as he is concerned.

The Court: The ruling will be reserved.

Q. (By Mr. Dennis): Referring to plaintiff's Exhibit #10, I will ask you if you have seen that before?

A. Yes. This was taken from the defendant Takahashi November 2.

Q. And referring to plaintiff's Exhibit #11?

(Testimony of A. S. Atherton.)

A. The same answer.

Q. Referring to plaintiff's Exhibit #12?

A. The same.

Q. Referring to plaintiff's Exhibit #13?

A. The same. [84]

Q. Referring to plaintiff's Exhibit #14?

A. The same answer.

Q. Referring to plaintiff's Exhibit #15?

A. The same.

Q. Referring to Plaintiff's Exhibit #16?

A. The same answer.

Q. Plaintiff's Exhibit #17? A. The same.

Q. And plaintiff's Exhibit #18?

A. The same answer.

Referring to plaintiff's Exhibits #10, #11, #12 and #13, I consulted a code book, the duo code and looked up the code words listed on these exhibits, and I found the translation to be as given on these code exhibits.

Referring to plaintiff's Exhibit #15, I had a conversation in regard to that with Edward Y. Osawa in the King County jail. And also in regard to plaintiff's Exhibits #16 and #14. And at that time I asked him if he had written these letters and he said that he had. Mr. Richards was with me, and I asked him where he was when he wrote them and he said he was in Tokyo, Japan. We asked him to whom he had sent them and he said to C. T. Takahashi at Seattle. After we had searched the defendants and had the conversation on the dock we removed several letters from the pocket of the

(Testimony of A. S. Atherton.)

defendant Takahashi and from the person of the defendant Osawa, as well as letters from his briefcase, and after some little talk on the pier, then left the dock.

Q. And when did you next see the defendant Takahashi?

A. Accompanied by Mr. Richards, I saw both defendants again that day about ten o'clock at night at the office of C. T. Takahashi, which was at 212 Fifth Avenue South, in this City. At that time we requested them to accompany us to our office [85] in the Federal Office Building, which they did. And upon arrival there Mr. Osawa was set in one room while we talked with Mr. Takahashi in another room, not within the hearing of Mr. Osawa. We asked Mr. Takahashi regarding his imports and exports, and among other things he told us that he had been engaged in the business of exporting commodities consisting of machinery, tanks, some lumber, gunny sacks, old rubber tires, old automobile bearings and some other things. We asked him in regard to the China Importing and Exporting Company. He stated that he normally did business under the name of C. T. Takahashi and Company, but whenever he dealt with any one who might have a prejudice against a Japanese name, he employed the other title of China Import and Export Company; and at times when using that name, he would secure a friend of Chinese descent named Willie Leo to sign papers for him. In regard to some of his exports he stated that there had been rejections of

(Testimony of A. S. Atherton.)

A. The same answer.

Q. Referring to plaintiff's Exhibit #12?

A. The same.

Q. Referring to plaintiff's Exhibit #13?

A. The same. [84]

Q. Referring to plaintiff's Exhibit #14?

A. The same answer.

Q. Referring to plaintiff's Exhibit #15?

A. The same.

Q. Referring to Plaintiff's Exhibit #16?

A. The same answer.

Q. Plaintiff's Exhibit #17? A. The same.

Q. And plaintiff's Exhibit #18?

A. The same answer.

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(Testimony of A. S. Atherton.)

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(Testimony of A. S. Atherton.)

some of his applications for a license to export. We asked him if he had those rejections and he said that he had a file of them. Mr. Richards and I asked him if we might see that file. He said if we would come to his office the next morning, November 3, 1941, he would show the file to us. The next morning we went to his office and at that time he was accompanied by Mr. Thomas Masuda, who was then his attorney. The four of us had some discussion.

Q. (By Mr. Dennis): Referring to plaintiff's Exhibits #19, #20 and #21, I will ask if you have seen those before?

A. They were contained among other rejection applications for licenses for export. I made a request to take them and Mr. Takahashi acceded to the request.

With reference to plaintiff's Exhibit #21 and #19, we had a conversation with C. T. Takahashi at the same time in regard to these two exhibits. Mr. Richards asked Mr. Takahashi if the [86] tanks listed on Exhibit #21 were the same three tanks as those listed on Exhibit #19, and Mr. Takahashi said "yes, they were the same three tanks". He was then asked if the consignee on Exhibit #25, which was given as Hua Hsin Company of Shanghai, China, had any connection with the Mikuni-Shoko Company of Tokyo, which was given as consignee on September 19. Mr. Takahashi said there was no connection at all. He said that when he had made the application on April 16, 1941, Exhibit #19, and it had been returned from Wash-

(Testimony of A. S. Atherton.)

ington rejected he had gone out and got a new customer, which was the Hua Hsin Company of Shanghai, China.

With reference to plaintiff's Exhibit #21, he was asked who Leo Nye Sing was and he said he was Willie Leo whom he had described to us the night before in our office. As a reason for Leo Nye Sing signing that application, he said the applicant being named in this case as the China Import and Export Company he had secured Leo Nye Sing to sign it to give the appearance of a thoroughly Chinese concern. He said nothing about compensating Leo Nye Sing, except that he had done favors for Leo before. We talked with the defendant Takahashi, with Mr. Masuda, his counsel, at his place of business, practically every day for the next week. We obtained no further papers from him during that period, but in the following November we got other papers from him. I borrowed papers at frequent intervals. I would borrow some papers and he would give them to me and I would take them to the office, examine them and bring them back, and he would give me some more. That occurred two or three times. Of some of the papers that I thought important I had a photostat copy made.

The Court: I am advised that Leo Nye Sing is present and is available. [87]

Mr. Crandell: I would like to cross examine him in reference to one thing, but I wish to disclose the purpose in the absence of the jury.

(Testimony of A. S. Atherton.)

The Court: The jury may be excused for this reason.

(The following proceedings were had in the absence of the jury):

Mr. Crandell: It has come to my attention that Mr. Leo Nye Sing has been registered with the Customs Department as the agent of the China Import and Export Company and I want to examine him on that for two reasons: First to disclose that registration; second, it goes to his credibility. That was brought to my attention only this morning.

The Court: You may have the privilege of cross examination.

(Thereupon the jury returned into court.)

Q. (By Mr. Dennis). Mr. Atherton, when you met the defendant Osawa in the County jail, did you have any talk with him about whether he had been in Shanghai or not?

A. I asked him if he had been in China on the trip in question and he said that he had not. He said he left Seattle about March 7, 1941, and had gone to Japan and from there he had made a trip over into Manchukuo and from there back to Japan and had returned from Japan to Seattle on the trip in question, but he had not gone to Shanghai. Going back to Charles T. Takahashi, I talked to him relative to telephoning. That was about November 12. Mr. Richards and I were together and Mr. Masuda accompanied Mr. Takahashi. Takahashi said that he had bought thirty-two old storage tanks

(Testimony of A. S. Atherton.)

over in Montana and these had been dismantled and he had sold them to the Mikuni-Shoko Company of Tokyo, Japan, and had shipped them over there. After a period of time following, along in December, 1940, he had received an order from the Mikuni-Shoko Company for eleven [88] new storage tanks, but that he had been unable to fill that order by reason of the shortage of material, or possibly priorities, or some such things, so the order had finally gotten down to three tanks instead of eleven, and they had given this order to the Galamba Supply Company in Kansas City, Kansas, which concern in turn had them built by the Graver Tank Company of East Chicago, Indiana, and that during the negotiations for these tanks some of the correspondence had been by letter with the Mikuni-Shoko Company in Tokyo, some by cable and some over the long distance telephone, and in that connection he said that the toll on the long distance telephone was \$8.00 a minute and it ran the bill pretty high on account of the people on the other end taking so much time over the formalities before they could get down to business, and that his telephone bill often was \$1,000.00 a month. He also said that prior to the completion of these three tanks he had received through various letters of credit through Mikuni-Shoko Company some \$71,700.00 to apply in payment of them, and that along in January or February, at any rate prior to the completion of the tanks in March, he had sent his Manager, Osa-
wa, to Washington, D. C. in an effort to secure a

(Testimony of A. S. Atherton.)

license to export them, and that following his dispatch of his Manager Osawa to Washington he had sent also a man by the name of Shenker of Portland, Oregon, to Washington, on the same mission.

Cross Examination

By Mr. Crandell:

Q. Did Mr. Takahashi tell you there had been an attempt to sell certain tank equipment in Mexico? A. Yes.

Q. And did he tell you that when he found the Mexican firm with whom he was dealing was on the black list of the [89] United States that he immediately cancelled his contract with that company?

A. No. He said he had sent a telegram cancelling that contract.

Telegram marked defendants' A-6 for identification was offered in evidence.

Mr. Dennis: No objection whatsoever.

The telegram was admitted in evidence and marked Defendant's A-6

(Exhibit A-6 was read to the jury by Mr. Crandell).

Q. (By Mr. Crandell) You had in your possession also, Mr. Atherton, the contract and letters of credit, together with the documents, or copies of the documents, that were sent to the State Department, pertaining to this contract between Mr. Takahashi's Company and this Mexican Company, didn't you? A. Yes.

(Testimony of A. S. Atherton.)

Mr. Crandell: I ask that these be marked, respectively, Exhibit 3-A, 4-A and 7-A, using the same marks as in the previous trial.

They were so marked.

Exhibit 3-A, 4-A and 7-A admitted in evidence.

The documents admitted in evidence and marked Defendant's exhibits 3-A, 4-A and 7-A.

The documents were read to the jury by Mr. Crandell.

Mr. Kakahashi said that he had a telegram from the Mexican Company which caused him to cancel the contract. I stuck that telegram in my pocket.

Q. I hand you herewith exhibit marked A-5 for identification and ask if that is the telegram?

A. Yes. [90]

Exhibit A-5 admitted in evidence.

The telegram was admitted in evidence and marked Defendant's Exhibit A-5.

(Exhibit A-5 was read to the jury)

I watched Mr. Osawa until he left the dock and Mr. Takahashi as well. I was suspicious of Mr. Osawa because that letter, Exhibit A-1, had been called to my attention.

Exhibit marked A-1 admitted in evidence.

The letter admitted in evidence and marked Defendant's Exhibit A-1.

I was advised that Mr. Osawa was connected with Exhibit A-1.

(Exhibit A-1 was read to the jury by Mr. Crandell)

(Testimony of A. S. Atherton.)

My suspicion of Mr. Osawa was aroused because I found in the letter that he was bringing in six pairs of silk stockings. When passengers arrive in a foreign port they are required to make a declaration.

Q. Now, I hand you herewith Exhibit marked A-2 for identification and ask if that is the original official declaration filed by Mr. Osawa declaring goods that he brought in on that trip?

A. I know that it was made by Mr. Osawa to the Customs office. These declarations by passengers are usually handed to the Customs officer one or two days before the ship lands. The date on this declaration, November 2, indicates it was received that day. These declarations are available to Customs officers to compare with the package that comes through.

Mr. Crandell: Defendant Takahashi offers in evidence the exhibit marked A-2 for identification.

The paper was admitted in evidence. [91]

The paper admitted in evidence and marked Defendants' Exhibit A-2.

The three or four small pages attached to Exhibit A-2 constitute an ordinary list of articles declared. On the third page of these papers of articles declared on the third line is described "six pair of silk stockings".

Recross Examination

By Mr. Griffin:

When I was shown Exhibit #19 and #21 I said

(Testimony of A. S. Atherton.)

they were delivered to me voluntarily by Mr. Takahashi. It was on November 3 that he explained the situation of using the name of C. T. Takahashi & Company sometimes and other times China Import and Export Company. I investigated and found that the China Import and Export Company existed. I found that the name was duly and regularly registered with the County Clerk of the Superior Court of the State of Washington for the County of King on the 20th day of January, 1927. I didn't investigate whether Leo Nye Sing, whose signature appears on Exhibit #21, was registered with the United States Customs as an agent of the China Import and Export Company. It would not surprise me to know that he was. I knew as a Customs agent that over a long period of years, constantly in his line of business, Mr. Takahashi had been shipping to the Orient, both China and Japan, this same kind of material, and there was nothing illegal about any such arrangement until the embargo went into effect.

Redirect Examination

By Mr. Dennis:

This telegram, which is Exhibit A-5 does not refer to the three tanks, the three new tanks listed in Exhibit #19.

(Witness excused.)

Mr. Dennis: The Court took under advisement Plaintiff's [92] Exhibit #9 and Plaintiff's Exhibit

#36. I offered them and the Court reserved ruling.

The Court: I am assuming that the defendants—both defendants—are objecting to Exhibit #9?

Mr. Crandell: Just the basic objection.

The Court: And that the defendant Osawa objects to both exhibits?

Mr. Griffin: That is right.

The Court: The ruling is again reserved.

Mr. Dennis: At this time the plaintiff rests, your Honor.

Mr. Crandell: We would like to make some motions.

The Court: Do you want the jury excused?

Mr. Crandell: I think so, the Court may want some argument.

The Court: The jury will be excused subject to call.

(Thereupon the following proceedings were had in the absence of the jury):

Mr. Crandell: Shall we proceed?

The Court: Counsel, you may in the absence of the jury make your objection. Since this case has been tried before me before and I am familiar with the evidence, it is not necessary to make any arguments unless there is some argument that has not been presented to me before; but any argument that has been made I have heard and I am satisfied with what the ruling should be.

Mr. Crandell: Then I will just make the formal record.

The Court: All right.

Mr. Crandell: The Government having rested, the defendant Takahashi now challenges the sufficiency of the evidence and the sufficiency of the information to charge a crime of making a false statement, of conspiracy or of any other offense; that the evidence fails to prove an offense of conspiracy or of stat- [93] ing in the application the wrong destination; and we move the Court for a directed verdict on the part of the defendant Takahashi.

Mr. Griffin: The defendant, Edward Y. Osawa, at this time demurs to the evidence introduced and challenges the sufficiency thereof and moves for a dismissal and a directed verdict on the ground and for the reason that the indictment as made does not state a crime as against this defendant on any count, and the evidence as produced has established affirmatively the fact that the defendant Osawa was not a party to any such conspiracy charged in the count and was without the jurisdiction of the Court at the time this supposed conspiracy could exist, and it could only exist by reason of the passage of the act and an executive regulation under it.

And as to Count 2, which is another conspiracy count, that he was not a party to the application for the license; is not a member of the Charles T. Takahashi & Company or the China Import & Export Company, only an employee thereof. He did not make the application for the license in question as shown affirmatively by the evidence.

And as to Count 3, the evidence affirmatively

establishes that he was in no wise a party to any false and fraudulent statements and representatives made to any department of the United States Government on or about July 16, 1941, and it affirmatively establishes he was without the jurisdiction of not only this Court, but every United States court at the time.

Also, in addition thereto, and in preserving the constitutional rights of this defendant as to search and seizure, there have been introduced in evidence certain documents taken from the person of Mr. Takahashi; on which it has endeavored to connect a conspiracy count with the defendant Osawa, and that [94] the original motion to quash and sequester should have been allowed, and exception was preserved at that time as to the introduction of those exhibits over objection, as to my client, was duly noted.

Your Honor has heard argument heretofore on this matter and I do not imagine I could add to what has already been said.

Mr. Crandell: My attention has just been called to the fact that I have not designated any Count in the indictment, following—

The Court: It will be understood your motion, challenge and demurrer runs to the indictment as a whole, and as to any part thereof, separately.

After some argument,

The Court: The motions which have been designated as the basic motions are again denied.

The motions, and challenges, and demurrers of each defendant as to the indictment and the evi-

dence as to each count of the indictment are overruled and denied and exception is in each instance allowed.

(Recess ended).

The Court: You may proceed.

(Therefore the following testimony was introduced on behalf of the defendants):

OSCAR W. DAM

Called as a witness on behalf of the defendants, after having been duly sworn, testified as follows:

Direct Examination

By Mr. Crandell:

My name is Oscar W. Dam. I am Deputy Collector in charge of the Foreign Division of the United States Customs. In such office we have powers of attorney on file, which authorize ex- [95] porters to sign certain import papers, ships' export declarations and neutrality oaths. I am familiar with the China Import and Export Company. The power of attorney in the files was dated May 7, 1941, executed by C. T. Takahashi, proprietor of the China Import and Export Company. The agent named is Leo Nye Sing. That power of attorney has been filed since May 7, 1941. I have refreshed my recollection by the record of Japanese mail and passenger ships incoming from Tokyo from the month of July, 1941 to November, 1941. The Heiu Maru arrived at this port July 7. The next ship

(Testimony of Oscar W. Dam.)

was Heian Maru, which arrived July 31, and the third was the Hikawa Maru, arrived on November 2. That is all of the regular passenger or mail ships. The length of time between Japan and Seattle is thirteen or fourteen days.

Cross Examination

By Mr. Dennis:

During the period mentioned the Canadian Pacific, Empress boats, also carried mail and there was some clipper mail from the Orient by way of San Francisco. There was airmail service between Japan and San Francisco.

Witness excused.

C. T. TAKAHASHI

One of the defendants, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Crandell:

My name is C. T. Takahashi. I am a citizen of the United States of America, thirty-nine years old. I was born in Seattle, Washington, of Japanese ancestry. My father arrived in Tacoma about 1889 and arrived in Seattle around 1892. He attended the Pudget Sound University at Tacoma. In Seattle his [96] business was importing and exporting. He died in 1920 and after his death I continued the business. I went to the public schools in Seattle,

(Testimony of C. T. Takahashi.)

then was two years in Staunton, Virginia, in the Staunton Military Academy, then returned to Seattle and attended the University of Washington for three years. At Staunton I had some military training and later was in the Boy Scout movement in Seattle, where I was teaching boys good citizenship and the meaning of scouting, namely, to be mentally alert, physically strong and morally straight. It was during my scout work that I met Mr. Osawa, and through that acquaintance he became associated with me later in business. This association started about 1929. By 1941, when this charge was laid, he was my General Manager. My business has been general importing and exporting from the North American continent to the Orient, and from China and Japan I was importing to the Northwest here. The products generally being imported in the main were fertilizers. By that I mean meal, linseed meal, linseed cake and meals for fertilizers. Those were our largest items. We exported a little lumber and products of the Northwest, steel, etc., practically anything that we had a market for. It included worn rubber tires and metal junk. During the latter part of 1940 and up to July 16, 1941, there were many large firms doing the same business and were our immediate competitors. Between the last dates it was legal all the time so to do. My mother is in Japan at present and unable to get out. I have had the assistance, in an effort to get her out, of Mr. Zumwalt, an Immigration officer,

(Testimony of C. T. Takahashi.)

who is to be a witness here for the defense. My business is conducted under the name of C. T. Takahashi & Company, and also the China Import & Export Company. I am the sole owner and am not incorporated. The China Import & Export Company has been used as a trade name [97] since about 1927. I had it registered about then.

The Declaration of Proprietorship marked Defendant's Exhibit A-9 for identification was handed to the witness. That is a copy of my declaration of proprietorship of the China Import & Export Company, filed and prepared by me. Exhibit A-9 for identification was admitted in evidence.

The Declaration of Proprietorship marked Defendant's Exhibit A-9 for identification.

(Exhibit A-9 read to the jury by Mr. Crandell).

It is difficult to say what percentage of my business was conducted under the name China Import & Export Company. At certain periods it was greater than half, but by 1941 it wasn't even half.

Referring to Exhibit A-4 for identification, which is the contract with the Mexican concern, I entered into that contract under the name China Import & Export Company. It was not done with the purpose of deceiving or misleading anyone. I have used the name C. T. Takahashi & Company since 1924.

Referring to Exhibit #19, that was signed by Iver Ewers, an attorney in Washington, D. C., who represented us. He was engaged by Mr. Osawa or

(Testimony of C. T. Takahashi.)

Mr. Shenker, who were authorized by me to do so. When it was drawn in Washington the present pencil marks were not on the application. I don't know how many copies were made of the application, but Exhibit #19 was an original copy that was returned to us.

Exhibit #21 is an application I made for shipment to China.

(Whereupon the jury was duly cautioned and excused until 10:00 a.m. October 3, 1941).

October 3, 1941, Court convened pursuant to adjournment. [98]

Mr. Dennis: May it please the Court, I will state I have Leo Nye Sing in court this morning, in accordance with the request of the Court.

Mr. Crandell: Thank you. I wonder if we can withdraw Mr. Takahashi and put Leo Nye Sing on, and I would like also to put on Mr. Ira Bedle of the National Bank of Commerce.

IRA W. BEDLE

A witness called on behalf of the defendants, after having been duly sworn, testified as follows:

Direct Examination

By Mr. Crandell:

My name is Ira W. Bedle. I live in Seattle and have so lived for twenty-four years. For twelve years before that I lived in Spokane. I am Vice President of the National Bank of Commerce in

(Testimony of Ira W. Bedle.)

this City. I am acquainted with the defendant, Mr. Takahashi. I have known him in a business way about fifteen years. I know his reputation among his business associates for being an honest law-abiding citizen. That reputation is good. I am also acquainted with Mr. Edward Osawa. I have known him seven or eight years and know generally his business associates. I know his reputation in the community for honesty and being a law-abiding citizen. That reputation is good.

Cross Examination

By Mr. Dennis:

I don't know Mr. Kohno or Mr. Ikuta or any of their associates in Japan.

(Witness excused.)

LEO NYE SING

Recalled, having been previously sworn, testified as follows:

Further Cross Examination

Q. (By Mr. Crandell): Did you go to any office, either federal [99] *federal* office or state office or any other office and register as an agent for China Import & Export Company at any time?

A. No, sir.

(Witness excused.)

C. T. TAKAHASHI

Resumed the stand for further

Direct Examination

By Mr. Crandell:

Our main office was Seattle, Washington. We had a branch office in Tokyo, Japan. We had in charge of that office a man named Togo. We had a branch office, a representative in Vancouver, B. C. The Manager was Meyer Franks. We had a branch office in Portland, Oregon, in charge of Mr. William Shenker. I had another branch in Oakland, California, represented by Mr. Sali Gruenbaum. In the Seattle office, in my importing and exporting department, I had six employees. They were all American born of Japanese ancestry.

Q. Referring again to Exhibits # 19 and #21, what use did you make of #19 in preparation of #21?

A. I used #19 as a model in making out my application #21. The model was made and signed by my lawyer in his Washington office. Exhibit #21 was made in my office. On Exhibit #19 the pencil marks were made by my secretary, Mrs. Kawaguchi. Upon Exhibit #19 on the line where appeared C. T. Takahashi & Company there is a pencil memorandum China Import & Export Company. She also wrote that. All such pencil notations were made at my direction. The pencil memoranda were not made for the purpose of deceiving anyone, nor with the idea that the destination named in #21 should be China when in fact I meant Japan. My instructions to all members of

(Testimony of C. T. Takahashi.)

my office with reference to United States government regulations were at all times to follow all such regulations to the exact letter. [100]

With reference to Exhibit #85, a telegram from the Mexican company, I remember receiving it and I immediately answered it.

Exhibit #86 is the answer. That answer was sent cancelling my contract with the Mexican concern, was sent pursuant to my policy of complying with the Federal Government's regulations.

Mr. Crandall: If the Court please, at this time I want—if Exhibit #9 to which the Court has reserved a ruling, is to be accepted as an exhibit, it is logical now for me to follow in my examination a subject that will involve that. And if it is not going to be introduced then I will not have to touch upon that.

The Court: As I understand it, Mr. Crandell, both you and Mr. Griffin, for your respective clients, objected to Exhibit #9 for identification.

Mr. Crandell: My objection is the basic objection.

The Court: I say you objected.

Mr. Dennis: I withdraw the offer, may it please the Court, as to Exhibit 9.

The Court: All right. That takes care of that.

The offer of Plaintiff's Exhibit #9 withdrawn

Mr. Crandell: Handing you Government exhibits marked #17 and #18, did you at the time the application known as Exhibit #21 was prepared, know

(Testimony of C. T. Takahashi.)

of the existence of the two letters marked Exhibits #17 and #18?

A. I did not.

Q. I notice that Exhibit #18 and #17 are both dated Japan, July 16. About what date did you receive these letters?

A. Sometime, I believe, in August.

Q. I notice that your application for the sale of these three tanks is also dated July 16, 1941. What was the date the [101] application was made and transmitted to the State Department?

A. July 16.

Q. So that your application here in Seattle was prepared and transmitted to the government of the United States on the same day that the letters, 17 and 18, appear to be dated?

A. Yes. I had no knowledge whatsoever of Exhibits #17 and #18 when I made that application, and the letters, 17 and 18, did not influence or control me or persuade me in any way in making that application.

With reference to the three tanks, they were three complete new tanks. Prior to this time I had bought and sold tanks to Japan. We had sold around thirty-two old tanks, dismantled tanks; From the beginning of the year 1940 to about the beginning of the fall of 1940.

Mr. Crandell: If the Court please, I now have an exhibit, being a letter with a document attached, which I desire to be marked as one exhibit. Letter and document attached marked A-10 for identification.

(Testimony of C. T. Takahashi.)

Mr. Crandell: Describe briefly what they are without telling the contents.

Objected to by Mr. Dennis and objection sustained.

After further argument,

The Court: Counsel, there will be recess and I will listen to you again. If you convince me that I am mistaken I will reverse my ruling. If you don't the ruling will stand.

Recess.

I had Exhibits #17 and #18, together with some other documents that were associated with them, in my possession on November 2, when I went to the Great Northern dock. I went to the dock at Mr. Osawa's request. I received a telegram from him from Victoria, Canada, which was sent when the boat arrived [102] there the day before, asking me to bring \$200.00 to the dock to give to him to pay for the duty that would be charged upon presents and things that he had. I had \$200.00 with me.

I was the one who directed Mr. Osawa to go to Japan. The main purpose was to close our Tokyo office and settle an account of a very little business deal that we had pending. I instructed him about March, 1941, to go. At that time I did not advise, suggest or authorize him to go over there and make arrangements to make shipments to China so that they could be transferred to Japan. The closing of our Tokyo office meant that we were finished there, going to abandon further operations there.

(Testimony of C. T. Takahashi.)

Mr. Crandell: Going back to Mr. Osawa's return to Seattle, for what purpose did you take the letters, #17 and #18, to the boat?

A. I wanted to discuss them with Mr. Osawa at the very earliest possible moment. The interpretation that I made of it here was absolutely contrary to the policy of my firm. I had not answered the letters up to that time and never have answered them and they never since had any correspondence with the Tokyo company. I never at any time by word of mouth or written statement suggested the shipping of any goods at any time to China or anywhere else where they could be re-shipped to Japan and would not enter into such an arrangement. After that application for license was tendered I made further effort to dispose of the tanks. In the spring of 1941 we tried through the Mexican concern to sell the three new tanks to the Mexican government, through their oil department, and we also tried through New York to sell the three new tanks to the British Buying Commission and through my—and I sent Mr. Shenker to the British Commission, located in New York, and paid his expenses and instructed him to find a buyer. About the Mexican [103] people, I asked Mr. Shenker to approach certain friends I had in Mexico, besides any that he himself could find. I paid his expenses on a trip to Mexico and gave him his instructions. At all times we were trying to sell the tanks in this country. There was a time when I had my man, Mr. Strangeways, approach the Army depots at San

(Testimony of C. T. Takahashi.)

Francisco. All my branch offices were working on the matter. I was not trying to get them into China so that they could be shipped to Japan. I also made attempts to dispose of the tanks in Canada, through my branch office in Vancouver. We received an offer for the purchase of these tanks by cablegram from Shanghai. The original cablegram we attached to the application we made to Washington, D. C., so that the Government now has the original cablegram. That was not a fictitious order. I sent that order to the Department of Licenses in the State Department. I have never seen it since. The tanks are now in the United States; two of them are located on National Defense work and one was purchased in Portland by the Portland Gas. Since the transaction different departments of the Government have asked if we still had the tanks and wanted to buy them. I authorized you (Mr. Crandell) to give that information. I have done everything I could to assist the Federal Government in order to see if they could purchase them if they were available. I have never done anything in the conduct of my business that would thwart in any way the interests of the country.

Mr. Crandell: You may cross examine. Mr. Tillisch is here. Have you any objection if I put him on? He will be a short witness. He is one of the men on the Great Northern. He will be a very brief witness.

The Court: He may take the stand.

PAUL WILLIAM TILLISCH

Called on behalf of the defendant, [104] after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Crandell:

My name is Paul William Tillisch. I live at 1130—19th Avenue North, Seattle, where I have lived for eleven years. I have been in Seattle for twenty years. I am Chief Clerk to the General Manager of the Great Northern Railway. Have been such for thirty-four years and still actively engaged in railroading. I am acquainted with Mr. Takahashi, the defendant. I have known him since the Fall of 1918 in a business way. I know generally his associates and acquaintances in the City of Seattle. I know his reputation among those people for honesty and for being a law-abiding citizen. That reputation is good.

Cross Examination

By Mr. Dennis:

I know nothing about his associates in Japan.

Witness excused.

Recess

C. T. TAKAHASHI

on stand.

Cross Examination

By Mr. Griffin:

Mr. Takahashi: In the letter, Exhibit #14,

(Testimony of C. T. Takahashi.)

dated July 5, "The trouble with mercury and tinplate is that the Gunbu has no direct interest in it and the association is handling all imports of those articles", the word "association" means something similar to our Priority Board in this country. Japan was using priorities before we were here, in effect having an embargo on certain exports to this country; that was affecting import business to this country very much. Then the priorities or embargoes, whatever we call it, went into effect here on [105] certain items of export and that was cutting our export business. Prior to the invasion of China by Japan in 1937 we had important Chinese business, but after 1937 it all disappeared; in fact a lot of Chinese firms themselves disappeared. Prior to the regulations of embargo in the United States going into effect there was considerable activity on the part of certain associations against the shipment of anything to Japan. When it was first talked in the United States of an embargo we were supplying or preparing to supply certain used storage tanks to customers in Japan. We supplied nothing to the Japanese government as such. When we first started shipping used storage tanks we were in doubt whether or not a license was required and took the matter up with the Collector of Customs in Seattle. He was Saul Haas. We were unable to get definite information from him as he wasn't sure himself. The matter was taken up with his superiors in Washington, D. C., that is, with the State Department, and eventually we were ad-

(Testimony of C. T. Takahashi.)

vised by the Collector of Customs in Seattle that no license was required in our exportation of these used tanks to Japan. A letter to that effect was given us from the Collector of Customs. Prior to the receipt of that letter we made a formal application. Exhibit A-10 for identification shows our signatures to a formal application for a license. It bears the stamp of the Department of State of the United States. That letter is dated December 21, 1940.

Mr. Dennis: I object, and would like to ask the witness a question. Did any of this correspondence have to do with new tanks?

A. No, sir.

Mr. Dennis: I object on the ground that it has no bearing on the issues in this case, which all concern new tanks. We [106] are concerned entirely with three new tanks.

The Court: Let me see the letter. I have indicated by my previous ruling that I did not consider this material. No objection has been made to the preceding cross examination by Mr. Griffin. I will let the letter go in with the preceding evidence. The objection is overruled.

The letter is admitted in evidence and marked Defendants' Exhibit A-10.

(Mr. Griffin read Exhibit A-10 to the jury.)

Mr. Griffin: The dismantled tanks for re-erec-

(Testimony of C. T. Takahashi.)

tion purposes were shipped pursuant to that authority?

A. Yes. I complied with the Federal regulation in every particular. There was no difference between old tanks and new, except the fact that one had been used and the other had not. The tanks, old and new, were storage tanks for oil. Having made the application, Exhibit A-8, for old tanks, then I make application to the United States government for license for new steel dismantled storage tanks. That application was signed for C. T. Takahashi & Company by Mr. Osawa. I sent Mr. Osawa to Washington, D. C. to make the application. He was there so that he could find out and conform to everything that the United States government required. Mr. Osawa was in Washington at least a week. It became necessary for him to employ counsel.

Referring to Exhibit #29 and to part 2 of that exhibit, the name there is Ira Ewers. He was the attorney employed in Washington. This document came back to our office at one time. There was a renewal for the same tanks that Mr. Osawa had made the application for on February 8, 1941. The same attorney who made the original application made the second one. That application was rejected. There was an appeal made and [107] eventually the appeal was denied. The words used were "appeal disapproved".

Mr. Griffin: Mr. Dennis and I cannot agree as to the date written after the words "application re-

(Testimony of C. T. Takahashi.)

jected", but it would be April or May apparently and that is the best we can say.

Mr. Dennis: I think so.

(Noon adjournment.)

By Mr. Griffin:

Referring to Exhibit #29, part 2, being the application made by Mr. Ewers on April 16, 1941, with reference to a license for these three tanks, Mr. Osawa was in Washington. He was there in February, but not in April. In April he was in the Orient. He returned from Washington, D. C. the early part of March. He made a report upon conditions existing in Washington with reference to shipments of *materially* generally to Japan. And I sent him to Japan. The main purpose in sending him was to close the office there; another reason was we had an account to be taken care of in connection with that matter.

Referring to Exhibits #17 and #18, those are letters from Mikuni-Shoko Company that I received some time in August, 1941. The letter of July 16, 1941, Exhibit #17, which I received in August, states with reference to advancing money "Put up by us to you already"; I didn't have any advance money from Mikuni.

Shenker remained for a time in Washington, D. C. after Mr. Osawa returned. When Mr. Osawa went to Japan for me neither then nor at any other time did I give him any orders or directions to arrange to violate directly or indirectly any law or regula-

(Testimony of C. T. Takahashi.)

tion of the United States of America. Our branch office in Tokyo had no connection with Mikuni-Shoko Company Limited. They were a customer of ours. I am quite sure that they did not have any connection with the Japanese government, [108] officially speaking. They were a recognized, standard financial concern in Tokyo and one upon which I would rely upon their recommendation of the financial responsibility of another concern.

When I sent Osawa to the Orient it was contemplated that he should go to Shanghai. It was also necessary for him to go to North China, called Manchuria, where we had an account in difficulty. I wanted him to go to Shanghai to open a chain of connections for business with China. I was particularly interested in wood oil for import to the United States. Wood oil is one of the most vital materials in making paint which is used in war industries and in aviation. He was unable to go to Shanghai.

Cross Examination

By Mr. Dennis:

Referring to defendants' Exhibit A-5, which is a telegram, the tanks referred to therein were not the three tanks in question. These three tanks referred to in this telegram were different tanks than the three referred to in application, which is plaintiff's Exhibits #19 and #21.

And referring to defendants' Exhibit A-6, that telegram does not refer to the three new tanks.

(Testimony of C. T. Takahashi.)

Referring to defendants' Exhibit A-7, that letter has no reference to the three new tanks and the purpose of the affidavit attached to defendants' Exhibit A-7 was for the purpose of obtaining a permit.

Mr. Kono was here in Seattle for a while with me for about four months. I believe it was during the end of 1940 and the beginning of 1941. He was doing business with us, representing his own firm and not representing my firm. His headquarters were at the Holland Hotel. He was at our office almost every [109] day. He represented the Mikuni-Shoko Company Limited of Tokyo, Japan. Mr. Ikuta is a director of Mikuni-Shoko Company.

At one time my business with Japan and China was practically 50-50. And in 1940 and 1941 it was less than half in China to that in Japan. During the year 1940 I did not telephone to China because there was no telephone service there. In 1940 I made no shipments of steel tanks to China, nor in 1941. In 1941 I received a letter from a firm in Tientsin in North China. That is not the sum total of the letters received. I think there was quite a bit of correspondence, because we were trying to obtain walnut meats, and also furs from North China. We sent some goods to China during the years 1940 and 1941. We sent many automobile bearings; also rubber tires and newspapers and machineries. The orders came from Koman Company and also from another firm by the name of Manchuria Heavy Industries. The Koman Company is not a Japanese concern; it is Korean. I sent no goods to Shanghai

(Testimony of C. T. Takahashi.)

during the year 1940 or 1941. Prior to April of 1941 I never received any communication of any kind from Hua Hsin Company. I have not received any letter from them direct up to the present time. I understand Mr. Kiang is the Manager of Hua Hsin Company. I think his initial is M. Kono's name is also Chang. I never received a letter from him. The only communication that I ever received from the Hua Hsin Company was the cablegram, which is in Washington, D. C. The name signed to that cablegram was Hua Hsin Company; no individual name added. This proposition of three new 80,000-barrel storage tanks involved approximately \$88,000.00. Those tanks were already manufactured, finished about March, 1941. The cost of those tanks made at Chicago was about \$60,000.00 in Chicago. The \$60,000.00 had been paid in December, 1940, as a part advance payment and that money was returned to them; I [110] do not recall the exact amount that was paid to us, but I think somewhere around \$55,000.00 advance money was given to us in December, 1940.

Q. And then how much afterwards? And the balance was made up by a credit arrangement for payment of freight, and that amounted up to about \$71,000.00, as far as the credit arrangement goes, so you have been paid in full for the manufacture of the tanks, and then you had some advance money for freight. That is correct, isn't it?

A. No. That was another transaction altogether

(Testimony of C. T. Takahashi.)

the freight transaction, and that is how they got additional credit up to \$71,000.00.

It is difficult for me to say how much business I did with Japan during the year 1940 and the year 1941, because it was quite a large business and it all reflects on our books and I myself could not hardly tell you. I do not know whether we shipped to Japan over four million sacks, but we sold quite a lot of sacks. I do not know the exact figures. These were sold through Messrs. Mitsui & Company Seattle, Washington. We also sold thirty-two steel tanks through Mikuni-Shoko Company. We had correspondence back and forth with the Mikuni-Shoko Company and some long distance conversations with them. In 1941 we also had correspondence with the Mikuni-Shoko Company and long distance telephone conversations with them. And when Mr. Osawa was in Tokyo I had long distance conversations with him which continued until he departed on the last steamer over here. I telephone to Mr. Osawa in regard to the three steel tanks. I never sold any tanks to the Japanese government direct, but I sold thirty-two used tanks to the Japanese government through Mikuni-Shoko Company.

Recross Examination [111]

By Mr. Griffin:

In my conversation with Mr. Osawa I told him that the Government had rejected the application prepared and filed by Mr. Ewers at Washington, D. C. and that an appeal was taken on that matter

(Testimony of C. T. Takahashi.)

and that the appeal had been denied and that no shipment could be made to Japan.

When Mr. Kono was in my office in Seattle in the winter of 1940 and 1941 he was endeavoring to establish a connection with me as the exclusive agency in Japan. I had no connection with him personally different than any other customer. He was the one referred to in one of Mr. Osawa's letters as "Snickelfritz". I think that was kind of a joke played on him by the office force in our office because he was running around so much. It was only a nick-name.

Re-Recross Examination

By Mr. Dennis:

It is hard for me to be definite as to what month Mr. Shenker was in Washington, D. C. He was in Mexico in 1941 and was five or six weeks there.

Re-Re-Recross Examination

Q. (By Mr. Griffin): Now, I was a little confused from Mr. Dennis' cross examination in regard to the money or the \$71,000 or whatever it was. At the time that you received the order from the Hua Hsin Company from Shanghai, China, had you made any payment at that time for these tanks or any portion thereof?

A. Absolutely not.

Q. Now, as I say—you answered Mr. Dennis that at one time and I think the dates are important,—at one time you had an advance payment from Mikuni in the sum of \$60,000 for the manu-

(Testimony of C. T. Takahashi.)

facture and an additional payment for freight that [112] ran up to about \$71,000. Prior to the receipt of the Hua Hsin order in July had that money, advance payment, been refunded by you to Mikuni and by the transfer of yen by Mr. Osawa in Japan?

A. Yes, that had been paid back to Mikuni by transfer of yen.

Q. So that when you received the Hua Hsin order you were actually out of pocket the cost of these tanks, of manufacture, transportation and storage up to that time?

A. Yes, we were.

Q. And you were trying to dispose of them wherever you could, as you stated before?

A. Yes, sir.

Q. On a direct sale to the country involved?

A. That is correct.

Q. Was it your custom in your business to deal with letters of credit?

A. That is the absolute custom of all importing-exporting companies, and not to—well, except from 1923 to May, 1939, the beginning of World War #2, where all firms became very, very particular on that point, in fact getting money in advance, because throughout the world it was a chaotic condition and it was very important, and at that time a letter of credit was in effect a guarantee by a reputable bank.

Q. That the customers were paid that amount of money or should be paid by the bank? Yes, it was a irrevocable payment by the bank.

(Testimony of C. T. Takahashi.)

Exhibit A-3 is a copy of a form of letter of credit. That was the one from Mexico. I am located now at the Minnedoka Relocation Project, five miles from Eden at the fringe of the sagebrush desert in Idaho. I am connected with the Boy Scout movement in the camp and Mr. Osawa is assisting me in that work. [113]

Re-Re-Re-Recross Examination

By Mr. Dennis:

Mr. Osawa took care of arrangements of paying back the money to Mikuni-Shoko Company. I think it was the early part of March that I notified him to do so. I had yen in Japan. I instructed him to do so just before he left here for Japan, which was the early part of March. The application to ship these three tanks to the Mikuni-Shoko Company was dated April 16, 1941. At that time I do not think I had returned the money to Mikuni-Shoko Company. Right now I am not exactly sure whether the money was returned before or after the application was denied. I discussed it with him when he left, because that was part of the business of cleaning up our account in Japan. When I filed the application and when he went I did not expect to send these goods to Tokyo.

Q. Yes, and in spite of the fact that you did not expect to send these three tanks to Japan, you instructed Osawa to return the \$71,700.00 to the Mikuni-Shoko Company? Is that what you want this jury to understand?

(Testimony of C. T. Takahashi.)

A. What I want the jury to understand is that I had a lot of yen in Japan which I wanted to exchange into American funds. And whatever funds that they had there, I wanted to exchange into their credit account that we had here, because I did not want to have yen in Japan. My interests and home and everything is centered around here, and naturally I wanted to protect myself first.

Q. What I am interested in, Mr. Takahashi, is when it was that you definitely returned that money to the Mikuni-Shoko Company?

A. That I cannot recall, the exact date.

Q. You cannot tell us whether you did that by telephone? [114] I will ask you if you did telephone to Osawa to return that money to the Mikuni-Shoko Company?

A. I think I did by cable also. You see we had some 900,000 yen. And it was all in those moneys that we had over there; so I cannot tell you right now the exact time when a certain amount was taken care of at certain times.

Q. Now then, at the time you made the application to Washington, D. C., for these tanks to be shipped by the China Import and Export Company, did you have any order for any money or any letter of credit from Hua Hsin Company?

A. No, sir, I did not. I did not need it.

Q. You were relying entirely, as a matter of fact, on the Mikuni-Shoko Company, weren't you?

A. Well, we don't worry in our import-export business, Mr. Dennis, because if a person does not

(Testimony of C. T. Takahashi.)

send a letter of credit, even at the last minute, you don't have to load the goods, and as long as we have the goods we are not worried at all about finances.

Q. So you had no letter of credit at all from Hua Hsin Company?

A. That is correct.

Q. You were not relying on the Mikuni-Shoko Company?

A. If arrangements had been agreed upon, I would have waited for a letter of credit to come from China. If there hadn't been any letter of credit I wouldn't ship even if the license had been granted. I was not relying in any way on Mikuni-Shoko Company for the funds for the proposition from China. I would rely on them in this sense that they would have to recommend to us some firm of reliable financial standing.

Re-Re-Re-Re-Recross Examination

By Mr. Griffin: [115]

When Mr. Osawa returned from Washington I definitely had the opinion that the application would be rejected and as a result of that when I sent him to the Orient I advised him to settle the matter with Mikuni and get the yen out of Japan. It was in the Spring of 1941 that I first knew that the money had been paid to Mikuni-Shoko Company.

(Witness excused.)

EDWARD Y. OSAWA

one of the defendants, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Griffin:

My name is Edward Y. Osawa. I was born in Seattle, Washington. I am forty years old, an American citizen of Japanese ancestry. I went through high school in Seattle. I have been married about twelve years and my wife is an American citizen. My home since the date of my birth has been in Seattle. Now I am at Eden, Idaho. I have known Mr. Takahashi since childhood, and had my first business connection with him in 1929. He was then at 212 Fifth Avenue South, Seattle, where he is now. The name of the company was C. T. Takahashi & Company, also China Import & Export Company. The last named was being used at the time I first entered relations with him. The nature of the business was import and export, whether operating as the C. T. Takahashi Company or the China Import & Export Company. I was general assistant to Mr. Takahashi and worked up to general manager in 1940 and 1941. As general manager I was familiar with the details of the business. The bookkeeping was done by an auditor. In those years we had branches in Portland, Vancouver, Oakland and Tokyo, Japan, and different managers at each place. The Tokyo office had no physical connection with Mikuni-Shoko Company and was a customer. We once had a consider-

(Testimony of Edward Y. Osawa.)

able export and import business with China, but it fell off prior to 1940 and 1941. The principal break came in 1937, when Japan invaded China. At one time we had an important account in North China, commonly called Manchuria. The account was with the Kono Company. We had exported a considerable amount of merchandise to this company, consisting mostly of automobile bearings and tires. We also shipped some mining machinery to another company named Manshu Jyukogyo Company, known over here as Manchuria Heavy Industry. We were having difficulty with that account. I recall the time when there was required by the United States government a consent by way of license for the shipment of material of the kind we were shipping to the Orient. The first reaction, I believe, came in August, 1940, and had to do with scrap steel, to ship which a license was required by some department of the United States government. There was some controversy whether tanks would come under the scrap steel requirements. At that time we were shipping used tanks to the Orient for the storage of oil, and there arose the question whether they came under the heading of scrap steel.

Referring to Exhibit A-10, the second sheet, it has a copy of my signature. At about November, 1940, I made application on behalf of C. T. Takahashi & Company, to the United States of America for license to export eighteen complete used steel dismantled storage tanks and accessories for re-erection purposes. I thought I was complying with

(Testimony of Edward Y. Osawa.)

regulations of the United States government and the necessity, or lack of necessity, for license, referring to Exhibit A-10, and that is where I got the direction that no license was required. Following that we got an order [117] for new tanks. That would come under the heading of new steel. Whether new or scrap they are used for the same purpose. I went to Washington in connection with the three new tanks in question. In the application as ordered from Mikuni-Shoko Company in Tokyo. Originally the order was for eleven new tanks. We couldn't get eleven, only three. We did not manufacture the tanks ourselves, but had to arrange for the manufacture of them. We placed the order with the Galamba Supply Company of Kansas City, Kansas, who in turn placed the order with the Graver Tank Company of East Chicago, Indiana. By February 1, 1941, the three tanks were in process of manufacture. Then I went to Washington. That was about the time the application is dated. At that time I think the regulation, or Presidential proclamation, was made giving us ten days to ship all outstanding orders; from ten days off a license would be required. After reaching Washington I made an application. I got the printed form. The printed form was supplied through our attorney. Such applications are made in duplicate, or triplicate, I don't remember for sure. On Exhibit #29, part 3, is my signature. That is the application made by me on behalf of Takahashi & Company for a permit to ship to Mikuni-Shoko

(Testimony of Edward Y. Osawa.)

Company at Tokyo, Japan, these new steel dismantled storage tanks and accessories for re-erection purposes. That was the first application. It was filed through our attorney, Ira W. Ewers, an attorney in Washington, D. C. The Government did not grant the permit. I left Washington and returned to Seattle. At the time I left Washington I did not know definitely that the permit would not be granted. When I left Washington I believed that no license would be granted for the shipment of either scrap or new steel to Japan. I was in Washington about two weeks. In making the application I was endeavoring to comply with every [118] regulation of the United States government. In the early part of March I sailed for Japan. The main purpose was to close the office and to complete the transaction there of money to be paid us on the mining machinery deal that we made in Manchuria. At the time I left Takahashi had received an advance payment on these tanks from Mikuni-Shoko Company. At that time we had considerable yen in Japan. That is a customary condition of exporters and importers to keep money in their various countries where their offices are. I was advised that the application was rejected and that an appeal had been made. Some time away later we heard definitely the appeal was rejected. I settled the account with Mikuni-Shoko Company by an exchange of yen and refunded them by an exchange of credit. When I left for Japan I contemplated going to Shanghai and to Manchuria. I made my headquarters in

(Testimony of Edward Y. Osawa.)

Tokyo at the Imperial Hotel. While there I closed the Tokyo office. Mikuni-Shoko Company have no connection with Takahashi or the China Import and Export Company, except as a customer. When I left the United States Mr. Takahashi instructed me to comply with every rule, law and regulation of the United States.

Referring to Exhibit #29, part 3, there was a question raised about the form and a new one was made. I was out of town when they made the new one. When I was in Washington Mr. Shenker, manager of the Portland office, was with me. After making the application we split up in Washington and I went to New York. He came back to Portland. On my trip to the Orient I went to Manchuria in connection with the settlement of the controversy between our concern and the North China concern over the shipment of machinery. It was completed before I left Japan; so was the office closed. I did not go to Shanghai, being unable to do so due to restrictions in force. We were looked upon [119] as foreigners so far as Japan is concerned, that is, I am an American and restricted as a foreigner from going to Shanghai from Japan. When I left Seattle our company was interested in obtaining a representative in China. We were interested in importing wood oil. I wrote Exhibits #14, #15 and #16 to Mr. Takahashi. When in Japan I contemplated leaving for the United States about the middle of July of 1941. I didn't get the boat. I was trying to conclude my business, and it

(Testimony of Edward Y. Osawa.)

was not until two days after the sailing of the boat that I finally completed everything. I took the next boat out, which left in the latter part of October. That is the boat that arrived in Seattle on November 2. Between those two boats there were no mail-carrying boats to Seattle from Japan.

In Exhibit #14, being a letter written by me on July 5, 1941, "Was quite interested in the activity in Mexico", I refer to Mr. Takahashi sending Mr. Shenker down to Mexico in order to obtain a lot of second-hand machinery. Where I say: "The trouble with rails, mercury and tin plate is that the gunbu has no direct interest in it and the association is handling all imports of these articles" the term "gunbu" means "military party" and "association" is a group of buyers forming sort of a cartel, and they in turn, say it was scrap steel, certain firms would handle all the importing of all of that particular commodity into Japan. When in Japan I found that the governmental authorities were limiting their operations practically to large importers. They depended mostly on firms like Mitsui and Mitsubishi, and I tried to see if there was any importing business available in competition with these firms, and I found I was being sent from one government agency to another but never got anywhere, and I said "they gave us a low price to get rid of us." In saying: "Even if you had any business, [120] the matter of space", and so forth, "space" means steamer space. I found that I was able to do

(Testimony of Edward Y. Osawa.)

business in exporting with reference to rails, mercury and tin plate. The subdivision of that letter referring to "Marmon" means Marmon trucks of American manufacture we were trying to sell.

I was unable to go to Shanghai myself and I went to Mikuni's office and saw Mr. Ikuta and asked him to do me a personal favor to line up some good Chinese firm for me. It is possible that the Chinese firms in Shanghai at that time were operating only subject to the right to operate of the Japanese military that controlled the ports. When I say "control" they dictated exactly what these firms were to do. They knew their financial standing and they would then compare to find what firm was financially responsible.

Q. You say in that same letter: "In order to make it easier for you in making application, you can now say your representative is Willie Chang." Had Chang been in Seattle?

A. Yes, sir. He had no connection with Takahashi Company, but was a customer. He was given the name "Snickelfritz" by the boys in the office as a nick-name.

Q. You say: "Mr. Ikuta went to Shanghai and checked and found out that the wood oil at present is handled by Showa Tsusho, Mitsubishi, and so forth. so he negotiated to get this through the back door. The arrangement is a difficult one to explain here, but will do my best. Wood oil that came and is coming into Shanghai is held by gunbu. They have control of all the stock. The material may

(Testimony of Edward Y. Osawa.)

cost only 10 cents in the front, but when it comes to *Changhai* it's worth a dollar". What did you mean by "back door" and "from 10 cents to one dollar"?

A. By "back door" I meant that Mr. Ikuta would use his personal influence with the gunbu so it would be possible to get [121] the supplies. I was trying to get into that importing business of wood oil. By "10 cents and a dollar" I meant wood oil comes from the far interior of China in small quantities, and the closer they come to the port the prices go up because of the greater risk. I do not know if the Military took it for their own purposes when it reached Shanghai, but it was in there to be handled as far as exporting was concerned. I was not able to get that business of importing wood oil. I was informed that the Chunking Government had a large stock of wood oil in the United States which they were selling over here. The quantity was unknown. However, I surmised that no further stock was coming out of China unless it was coming through the Burma Road. Therefore, I figured it would be a lot easier to obtain it in Shanghai and bring it here.

"Manygo" refers to that company in Manchuria with whom we were having difficulty.

Q. Referring to Exhibit #15, letter July 12, you say: "It has been a long time since Kohno and finally Ikuta went to Shanghai and was finally able to make arrangements. In order to work progress

(Testimony of Edward Y. Osawa.)

better it is better that we have our own name registered there under CIECO". That means what?

A. China Import and Export Company, and is the initial of our Seattle registered name.

Q. You say: "Kohno, known as Willie Chang, will represent us there. That is the only way that we will be able to work a lot of things over there that other firms can't. For instance, wood oil is under control of the gunbu and in connection with a sort of Okurasho" What does that mean?

A. Treasury Department.

Q. What were you referring to: "Vladivostok and Netherland East Indies is absolutely out"?

[122]

A. We were talking about a lot of coal mining machinery just outside of Seattle. There is an abandoned coal mine and we were trying to sell that to North China. About this time shipping became a problem, so Takahashi advised me: How about shipping it to Vladivostok or the Netherlands East Indies, and I was advising him that that was out of the question. There was no inference of violating any rule or regulation of the United States government.

Referring to "quicksilver" I was not able to do anything.

Q. Referring to your letter of July 15, you say: "On the other hand, Shokosho said that even if our price was a little higher", what is Shokosho?

A. It is a department in the government that

(Testimony of Edward Y. Osawa.)

handles all imports and exports. I was endeavoring to comply with the government regulations if we were able to get exports out or imports in.

I did not at any time or at any place consort with Charles T. Takahashi, M. Ikuta or Koh Kohno, otherwise known as Willie Chang, and H. M. Kiang or any one of them, to violate any law or regulation of the United States of America.

With reference to the shipment of these three tanks, I didn't intend directly or indirectly to violate any law of the United States or any rule or regulation. I was not in the United States when application was made to the government for a license to ship these three tanks into China. I was in Japan. Irrespective of where I was, I did not arrange or endeavor to arrange for the shipment of these three tanks to China for transshipment to Japan. I didn't at any time or place with reference to these three tanks contemplate or make any false statement or declaration to the United States of America, to the Department of State, Department of Customs or any officer thereof. [123] I did not at any time violate, intend to violate or have a secret or concealed intention of violating the proclamation of the President of the United States of America made by the President in the interest of National Defense pursuant to section 6 of the Act of Congress approved July 2, 1940. In my correspondence or telephone conversations with Mr. Takahashi there was no intent, actual or concealed, that there should be transhipped out of China these three

(Testimony of Edward Y. Osawa.)

tanks if the license was issued to ship them to China.

When I arrived in the United States about November 2, 1941, I contacted Mr. Takahashi. I wired him from Vancouver and asked him to bring \$200.00 to the boat when it arrived in Seattle for the purpose of paying duty on gifts and merchandise that I got while in Japan and he met me at the boat. Before the boat docks all passengers are required to make a declaration of baggage, and I went to the trouble of listing every item, showing what case or what suitcase or what trunk they were packed in, and I made two copies. One I turned over to the ship who in turn turned it over to the Customs Agent and I kept one set for identification.

Exhibit A-2 entitled "Baggage declaration and entry" is one of the copies prepared by me for delivery to the Customs Agent. I divided the items and noted them in large trunk, certain articles in wardrobe trunk, itemizing each one, certain items in the steamer trunk, certain parcels in a suitcase, carton, and so forth and so on.

Referring to Exhibit A-1, a letter dated October 19, 1941, which refers to six pairs of silk stockings, these stockings were being brought in by me and were the ones that Mr. Takahashi's sister-in-law was sending to his wife and sister-in-law in the United States and had asked me to bring over here for them. [124] These stockings were listed The stockings referred to in the sheet of my listing "3" are the silk stockings referred to in Exhibit

(Testimony of Edward Y. Osawa.)

A-1. I had an invoice for the stockings which carried the price.

When I reached the dock and after the boat landed I had some difficulty in locating the various trunks, suitcases and bags. The ship gave me so many packages and when I got down on the dock and after the package was unloaded, according to the ship's report I was two cases short. These were boxes that were delivered direct to the ship from the store, and I wasn't sure, and I was looking around for those two. Mr. Takahashi helped me in that search. I had with me copy of my baggage declaration corresponding to Exhibit A-2, and during that search Mr. Takahashi and I passed that document back and forth between us or looked at it together.

(Adjournment until Tuesday, October 6, 1942).

EDWARD Y. OSAWA

a witness called on behalf of the defendants, having been previously sworn, resumed the stand for further examination, and testified as follows:

Direct Examination

By Mr. Bassett:

I wired Mr. Takahashi from Vancouver asking him to bring \$200.00 down to the dock so I could pay duty for gifts and presents that I had brought back from Japan.

(Testimony of Edward Y. Osawa.)

Referring to Exhibit A-1, being the letter signed by Mary and addressed to Chis and Chic, in leaving the boat in the excitement I must have left it behind. I gathered a lot of papers up and threw them in my briefcase and a lot of scrap that I thought was there I just threw in the basket and came [125] along. I thought at the time this letter was in my briefcase. I intended to deliver it. I arrived on November 2. The Customs agent did not take any papers from me other than what they took on November 2 at the dock, nor did they question me between that period and December 7, 1941. I was arrested early morning of December 8. Mr. Takahashi was arrested a few hours before. The Tokyo office and the Mikuni-Shoko Company in Tokyo were not connected. They were about a mile or a mile and a half apart.

Cross Examination

By Mr. Dennis:

I was general manager for Takahashi & Company. At times I had to do with sales. I had a certain part in selling the thirty-two tanks. They were purchased through Mikuni-Shoko Company for the Japanese army and the Japanese navy. We didn't know it at the time of the sale, but by the Fall of 1940 we knew they were intended for the Japanese army and navy.

Referring to new storage tanks, at the start it was eleven that they requested us to purchase. I didn't know whether they were intended for the Japanese

(Testimony of Edward Y. Osawa.)

army. I didn't know that the three tanks were for the Japanese government. So far as we were concerned we were selling them to Mikuni-Shoko Company. We presumed that they might be for the Japanese army, but had nothing to confirm it. I don't think that I ever saw the original of Exhibit #35, a letter written on November 24, 1940, because I was out of town most of those days. I may have been in California, New York, Washington, Kansas City or Wyoming checking up on tanks, getting tanks to ship to Japan. And if I was in Washington, most likely trying to get a license. I had nothing to do with arranging for the manufacture of the three new tanks in question. After the order was placed I was informed where they were being manufactured and understood the [126] purchaser was Mikuni, but even today I do not know whether they were for the Japanese navy or army. In January, 1941, I can't say for sure, I might have known.

Referring to plaintiff's Exhibit A-10, I didn't go to see Mr. Ballinger about that, nor anybody in the Customs House. On February 8 I signed an application in Washington for a license for the three new tanks that are in question in this case and put in the name of the consignor as C. T. Takahashi & Company. The application was prepared in my attorney's office in Washington and presented to the Division of Controls. At that time I learned enough to know that a license would not be given. I was informed by our attorney that they were rejecting practically ninety-nine per

(Testimony of Edward Y. Osawa.)

cent of applications, so that our chance of getting a license was very small. They were objecting because of the national defense. The information I had was that the Government did not want to see any steel going out of the country at that time. However, some licenses were granted and they said we might be able to get it although they doubted it, so on March 7 I presume that the attitude of the United States government was against the shipment of these three tanks and I conveyed that information to Mr. Takahashi. When I reached Japan I met Kohno there. He was employed by Mikuni-Shoko Company. My main business in going to Japan was to close our office and to clean up the Tokyo business that we had pending there and additional business, if we could get it directly. Kohno's name when he was in Shanghai was Willie Chang, which is a Chinese name. I never met Kiang, nor anyone connected with the Hua Hsin Company, nor did I have any telephone communication with the Hua Hsin Company. All I knew about the company I got from Kohno and Acuna.

Referring to plaintiff's Exhibit #9 for identification, I [127] first saw that in Tokyo. I think it was delivered to me at my hotel by one of Mikuni's men, and I brought it with me from Japan for the purpose of showing to Mr. Takahashi.

Mr. Dennis: I will offer plaintiff's Exhibit #9

Mr. Crandell: Our objections have been noted.

Mr. Griffin: Osawa's objection has heretofore been stated.

(Testimony of Edward Y. Osawa.)

The Court: Objection overruled. Exhibit #9 is admitted.

(Whereupon letter dated July 4, 1941, previously marked for identification as Plaintiff's Exhibit "9", received in evidence).

(Plaintiff's Exhibit #9 read to the jury by Mr. Dennis).

Witness continuing: The reference to Mr. Chang in that letter was Kohno. I had never met M. H. Kiang. Referring to "Payment: Deduct U.S. \$71,700 from our credit account", Hua Hsin Company did not have a credit account, and at this time Mikuni-Shoko Company had no credit account. I commented to the person handing me the letter that the Hua Hsin Company had no credit account. I called up Mr. Ikuta, who arranged with Hua Hsin Company for us. I told him that this was in error because of the fact that when Mikuni had that credit with us I paid them back in yen. Later on Ikuta asked me if I would give him the dollars back and take back my yen, which I refused, so there was no credit account of any kind, nature or description on these three storage tanks. I do not know whether the characters at the top of the letter are Chinese or Japanese. I cannot read it no more than you can.

Q. Did you ask Ikuta why that \$71,700 was in that letter.

A. Well, he told me that he had made arrangements with this Hua Hsin Company who would give

(Testimony of Edward Y. Osawa.)

him that dollar exchange [128] provided that we gave him the credit, and we told him that we would not agree to those terms because we had no use for yen in Japan ourselves.

Q. So he had agreed then, Mr. Ikuta had agreed to put up the \$71,700 for the Hua Hsin Company, hadn't he?

A. I don't think you understood my explanation of last time. I traded him yen for these dollars they had over here. He wanted to trade it back so that he can have dollars in Shanghai.

Q. But Mr. Ikuta had agreed to put up the \$71,700 for the Hua Hsin Company, hadn't he?

A. No, he made arrangements for Hua Hsin Company to give me \$71,700 in dollars for which he would give me the yen. That is the arrangement that he made, but I refused it. While in Tokyo I had telephoned Mr. Takahashi. I may have mentioned something about these new storage tanks in my conversations. I think the matter about the Hua Hsin Company was cabled to me from Mikuni's representative direct. I talked to Mikuni before they cabled it and they told me they had obtained this connection for me. I saw the cable while I was in Japan.

Mr. Crandell: I have a witness here who would like to leave. May I put him on?

The Court: All right.

HARRY GIVAN

a witness called on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crandell:

My name is Harry Givan. I am in the insurance business. I am acquainted with Mr. Takahashi and Mr. Osawa. I have known [129] them about six years and know their business associates generally in the City of Seattle and vicinity. I know their reputation among those associates for honesty and for being law-abiding citizens. That reputation is very good.

Cross Examination

By Mr. Dennis

I don't know their associates in Japan.

(Witness excused.)

EDWARD Y. OSAWA

a witness called on behalf of the defendants, having been previously sworn, resumed the stand for further examination and testified as follows:

Cross Examination

By Mr. Dennis:

Referring to Exhibit #14, I wrote that letter and sent it to Mr. Takahashi and the statements contained therein are true.

Referring to plaintiff's Exhibit #15, it was written by me and mailed to the defendant Takahashi and the statements therein contained are correct.

(Testimony of Edward Y. Osawa.)

Referring to plaintiff's exhibit #16, I wrote that letter and mailed it to the defendant C. T. Takahashi and the statements in that letter are correct.

In one of those letters something was said about doing business with Mexico. Some time in July, 1941, I heard from Mr. Takahashi about doing business in Mexico. He either wrote me or told me on the telephone that he was trying to make connections in Mexico and had sent Mr. Shenker down there to see if he could not do business there. I think he said he was trying to sell these three tanks and at the same time establish some business connection in Mexico so that we could do business between Mexico and Japan. The reason he was doing business in [130] Mexico was the embargo that was on in the United States. I agreed it was good business if we could buy things in Mexico and ship them to Japan.

Q. Despite the fact that it was contrary to the National Defense of the United States of America?

A. Well, the defense of the United States of America, at that time had nothing to do with the material in Mexico.

Q. The fact that steel was being shipped out of Mexico to Japan had nothing whatsoever to do with the National Defense in your opinion?

A. Well, our competitors were all doing business, the Standard Oil was doing business and so were all of the oil companies, so why shouldn't we?

Q. So you figured that if you could slip it through, it would be all right?

(Testimony of Edward Y. Osawa.)

A. That was just business.

I also speak in one of those letters *are* Vladivostok, and said it was no use to ship to Vladivostok because the Gunbu didn't have any control there. Gunbu is the military authority and material couldn't be shipped from Vladivostok to Japan or China. At this time I think it was China.

Referring now to plaintiff's Exhibit #17, I think the first time I saw this letter was just prior to the previous trial. I never saw it in Japan or talked with Mikuni-Shoko Company about it. I talked with them about "the three new tanks, 80's and accessories which we ordered from you last year", and the only information I gave on that was that I told them "why not offer these tanks which we have as a starter for our connection in Shanghai". The military authorities were hounding Mikuni every day to get these tanks. They were asking them when they were coming, why couldn't they get them through, and so forth, [131] and Mikuni in turn would relate that information to me. Yes, I wrote "Of course, they will overlook if we can not ship because of definite embargo like our tanks but even on tanks they are hounding us every day", and I also wrote "we sure are on a spot on the three tanks" and that was a fact. The military authorities were asking Mikuni all of the time and they were relaying that message to me.

When I was in Washington I didn't tell anyone that the tanks were being purchased for the Government of Japan.

(Testimony of Edward Y. Osawa.)

(Photostatic copy of letter dated April 4, 1941, marked for identification as plaintiff's Exhibit "40")

Lieutenant Colonel Saito did not vouch for my entrance to Japan. I never met him there or in this country. I understood that it was Mr. Ikuta of Mikuni who guaranteed my entrance to Japan.

Redirect Examination

By Mr. Griffin:

Q. When Mr. Dennis inquires from you that when you were in Washington in February, 1941, you gained the impression that steel products, of which these tanks are steel products, would not be permitted to be shipped to Japan, did you gain the impression they would not be permitted to be shipped to the Orient? A. No, sir.

Q. Did you gain the impression they would not be permitted to be shipped, however, to any port over which the Japanese had control?

A. No, I did not.

I found that the government was permitting certain New York competitors to ship direct to Japan. Our customer was Mikuni-Shoko and I learned that their customer was the Japanese army or [132] navy or the Japanese government. At the time of the sales of the original tanks there was no regulation against shipping direct to the Japanese government, army or navy, but even no permit was required. The policy of the State Department at that time was to continue shipments to Japan. I

(Testimony of Edward Y. Osawa.)

brought Exhibit #9, dated July 4, 1941, with me upon my return from Japan.

Q. Was one of the reasons that you were bringing that, and that the deal had not been consummated, due to this claimed credit of \$71,700?

A. They were to give me another contract when the actual deal was consummated, in lieu of this one. No deal was consummated with the Hua Hsin Company. As of July 4, 1941, I had not previously settled with Mikuni-Shoko Company the advance they had made upon those tanks. What they were proposing to do was, by some credit between themselves and Shanghai, to re-establish this credit with Takahashi's concern in the United States as a down payment on the tanks. I used the term "We wouldn't go for that", meaning I refused to consummate the deal upon that basis. I was endeavoring to and did exchange our yen into dollars to get them out of Japan and get the Takahashi money back into the United States. I did not consummate any additional business while in Japan so far as an actual shipment is concerned. Because of the necessity for State Department permits nothing was shipped.

(Recess.)

I made comment to Mr. Ikuta to the effect that I intended to comply with all of the rules and regulations of the United States of America in regard to either exports or imports. In Exhibit #9, with reference to "For your information, we might as

(Testimony of Edward Y. Osawa.)

well add there that these tanks are to be imported for the local storage purpose and will not be re-exported to any country [133] with whom you are not on friendly terms" that correctly stated the position of myself and the Takahashi Company. I informed them from the very first that we would not be interested in trans-shipment of any articles to China and Japan. On July 4, 1941, there was no country with which the United States was at war and I was familiar with the declared neutrality of the United States at that time. I had no idea, in Japan or elsewhere, or impression, that even if a permit was granted and a license granted to ship these tanks to the Hua Hsin Company in Shanghai that they would be reexported for any purpose whatsoever. At that time, July 4, 1941, Japan was in control of the port of Shanghai. I did not anticipate that a license would be granted at that time to ship to Shanghai. I did not know until I came back to the United States what effort was made to dispose of those tanks in the United States at the same time this application was pending.

Recross Examination

By Mr. Dennis:

Q. What was your idea in regard to shipments to any port over which the Japanese government had control?

A. I concluded myself—I thought that the United States government would not issue any permit to any territory occupied by the Japanese

(Testimony of Edward Y. Osawa.)

forces. I told that to the Mikuni-Shoko Company. I told them we will try but I doubt if we can get it. By "we" I meant Takahashi and myself, and we did try.

Referring to letter of July 4, 1941, the conversation was between Ikuta and myself.. It was not Mr. Ikuta who was to give me another contract. He informed me he would get another contract from Hua Hsin Company for me.

Mr. Crandell: We have a short deposition which it was stipulated we could read into the record.

[134]

The Court: You may.

(Whereupon the testimony of Mrs. Kawaguchi upon the former trial was read by Mr. Griffin and Mr. Bassett as follows:)

SWORN TESTIMONY OF MRS. KAWAGUCHI

My name is S. Kawaguchi. I lived in Seattle until recently. I lived there all my life. I went to the Seattle schools. I am acquainted with Mr. Takahashi. I started to work for him in 1929 and so continued until the time of his arrest. My work was general secretarial work.

Referring to plaintiff's Exhibit #19, I have seen that before.

The Court: It is the same exhibit with the pencil marks that we had before?

Mr. Bassett: Yes.

(Deposition of Mrs. Kawaguchi.)

(Whereupon the exhibit referred to was passed to the jury for their inspection)

Continuing: Upon that exhibit there is type-written "Japan" and opposite is written "China". Down below is written in typewriting "C. T. Takahashi & Company", and behind it is written "China Imp", then "Mikuni-Shoko Company" and on the same line is some Chinese name. These are all in my handwriting. I re-typed this with corrections I had made in pencil. In other words, I used #19 for a model, and with changes conforming to that pencil writing.

(Whereupon the cross examination was read into the record by Mr. Griffin and Mr. Bassett as follows:)

I typed the new application in the course of my duties as an employee of Mr. Takahashi.

Referring to Exhibit #19, I do not remember why I wrote [135] "leave out Sonken Galamba".

Q. Referring to another line where it says in typing "storage purposes by Mikuni-Shoko Company", you will notice there is a parenthesis after the word "purposes" and ending after Mikuni-Shoko Company, and right above that are the words in pencil "leave out", did you write that?

A. That is my hand-writing. I am unable to say at whose direction I did it.

ERVIN E. NICHOLS,

a witness called on behalf of the defendants, first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bassett:

My name is Ervin E. Nichols. I live at Port Angeles and am retired from business. I was formerly in material business, contracting and mill business. My mill was at Carlsburg, Washington. I have known Mr. Takahashi about seven years. I met him in a business way, and also socially. I know his reputation for honesty and veracity in the community in which he lives. It is very good.

Witness excused.

JOHN H. ZUMWALT,

a witness called on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bassett:

My name is John H. Zumwalt. I live in Seattle. I am an Immigration Inspector, stationed in Seattle. I know the defendant Edward Y. Osawa. I talked with him prior to leaving for Japan in 1941, with reference to the matter of leaving the [136] country without obtaining a passport. I told him he should not leave if he could get one. He said he didn't have time, so I told him if he wanted to

(Testimony of John H. Zumwalt.)

to go ahead without one. He could do so and prove his citizenship upon his return to this country. He told me that he was going to Japan to close up the Takahashi office there.

WILLIAM SHENKER,

a witness called on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crandell:

My name is William Shenker. I live at Portland, Oregon, and at present I am engaged in the purchase, manufacture and sale of steel tanks. I am a native-born American. I am acquainted with Mr. Takahashi and have known him about eleven years. I have known Mr. Osawa a like period of time. I represented the C. T. Takahashi Company in Portland as their buying agent from 1934 until about 1939. Therefore my capacity changed to that of operating their office in Portland. My Takahashi had another office in Vancouver, one in Portland, and I met the representative that operated the Tokyo office.

I first heard of the three new tanks in question in the Fall of 1940, when the negotiations for the purchase of those tanks originated. The tanks were manufactured by the Graver Tank and Steel Company in their East Chicago, Indiana, plant.

(Testimony of William Shenker.)

They were ordered through the Sonken Galamba Supply Corporation, at their Kansas City office. Mr. Takahashi made the arrangements. During the year 1940 and until the office closed I was in Seattle at least once every week, except when I was traveling in the East or Mexico on company business. During all of the time that I have known Mr. Takahashi the name China Import and [137] Export Company was in use. There was no sinister motive in the use of that name. The general policy of the Takahashi Company was always to comply with all rules and regulations promulgated by the Federal, state or other authorities. Mr. Takahashi gave those instructions on many occasions. I was familiar with the first application for a license to ship these tanks to Japan which was made February 7, 1941. I was in Washington, D.C. in the office of Ira S. Ewers, the attorney retained by our firm, at the time the first application was drawn. He drew the application and filed it. It was rejected with the provision that there was something irregular on the application and a new form had to be utilized. A new form was secured and filed either in March or April. It was also prepared by Mr. Ewers and it was rejected. After it was rejected an appeal was filed. Mr. Takahashi authorized the appeal and I made the arrangements with Mr. Ewers. When I was in Washington the Division of Controls of the Secretary of State office was the department I was in touch with. I had infor-

(Testimony of William Shenker.)

mal discussions with men in this department. I was with Mr. Osawa on these occasions.

Mr. Dennis: May I ask a question of the witness?

The Court: You may.

Mr. Dennis: What was the date of the rejection?

A. To the best of my recollection the rejection was the latter part of April, Mr. Dennis.

Q. And the appeal?

A. I thought sometime in May the appeal was rejected.

Witness continuing: Immediately following or about that time I made an effort to sell these tanks to the Federal authorities of the United States. That offer was made first to an officer, I believe he was a Colonel by the name of Scott, in [138] the Division of Controls office in Washington, D.C. I made the offer because I was convinced through my conversation with him that the application for the shipment of tanks to Japan would be rejected. I also made an attempt to sell these tanks to the British Buying Commission at their office situated, I believe, in the upper floor of the Willard Hotel in Washington, D.C. I was referred by them to the New York office of the Commission. I gave this information to Mr. Takahashi and he instructed me, by telephone, to offer the tanks to the British Buying Commission in New York. That was the

(Testimony of William Shenker.)

last half of April, 1941, but they were not interested in the purchase. I also went to Vancouver, B.C. for the purpose of disposing of the tanks in Canada. Mr. Takahashi instructed me so to do. Then I made efforts to dispose of them in Mexico. I went there early in May, 1941, and spent six weeks to two months. I did not consummate a sale. Mr. Okada came to replace me about two or three days prior to my departure. I gave him a full oral report of what I had done.

Referring to Exhibit A-4, entitled "contract of sale," my attention was called to that after it was consummated. I think there was about two-thirds of that material furnished under those instruments. That contract was cancelled by telegram. We received information to the effect that the purchaser was placed on the so-called black list by the State Department. Exhibit marked A-5 constitutes that information. Exhibit A-6 is the telegram used by Takahashi & Company to cancel that contract. I did not prepare the telegram, but it was shown to me prior to transmission. I approved that telegram. You see I first introduced this firm to our company. Cancelling that contract with the black list firm was absolutely consistent with Mr. Takahashi's policy. I made other efforts to sell the

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three steel tanks in question. Prior to leaving for Mexico I had communicated with the Standard Oil Company, the Shell Oil Company, Portland Gas and Coke Company, I believe the Clipper Gasoline

(Testimony of William Shenker.)

Company, to see whether or not they could utilize this type of new steel tank. They were not able so to do. These tanks were riveted tanks and the large gas companies preferred welded tanks.

(Group of letters consisting of nine pages marked for identification as defendants' Exhibit "A-11")

This correspondence has to do with efforts to sell the three tanks in question to the Equipment Corporation of America.

Exhibit A-11 offered and refused, to which an exception was taken by Mr. Crandell.

Cross Examination

By Mr. Griffin:

The relationship between me and C. T. Takahashi & Company was an independent contractor and never that as a salaried employee. I mean by that that in addition to the work I had been doing for Mr. Takahashi that I did other work on my own behalf. Just previous to my meeting with Mr. Osawa in Washington a restriction had been imposed upon the exportation of scrap steel of certain qualities from the United States to Japan. I believe that took place either in September of October, 1940. Previous to that there were no restrictions at all to my knowledge upon exportation of even scrap steel to a foreign country, including Japan. Prior to the embargo there was a great amount of scrap shipped to Japan. We were but a very small operator in the field. The first restric-

(Testimony of William Shenker.)

tions merely curtailed the shipment of No. 1 heavy melting scrap which is a certain trade name classification. Thereafter a new ruling came out prohibiting [140] the shipment of any type of scrap. Then came a ruling two or three months later prohibiting the shipment of new steel. Prior to October Takahashi had orders for and was shipping used steel tanks to Japan. In December, 1940, the three new tanks had been ordered from Sonken Galamba Supply Corporation. I don't know whether they were in process of manufacture. After that order was placed and we had been advised that a license was not required for used steel a new regulation came out from the Government, dated February 8, 1941. The application is shown in Exhibit #29, part 3. That application was held by Mr. Ewers until the 15th of February, or thereabouts, when it was filed. Then about a month afterward it was returned to us with the statement that certain parts of it were inadequate. The objection was to the form, not the substance. Then I went back to Washington and secured the services of Mr. Ewers again to determine the proper type of form to be used and had the new form of application filed. That new form is shown in Exhibit #29, part 2. That is the second one that was filed. Government's Exhibit #19 is the original of Exhibit #29, part 3. And upon that renewal application, started on February 8, the license was rejected on #19 and #29, and on that an appeal was taken. At that time I gained a definite impres-

(Testimony of William Shenker.)

sion that most of the applications for steel to the Orient would be rejected. I was advised by the Division of Controls that the Government was granting a few special licenses to competing New York concerns shipping direct to Japan. I discussed with Lieutenant Colonel or Major Scott the possibility of disposing of these tanks to the United States government. I was unable to dispose of them to the Government.

Recess.

By Mr. Griffin: [141]

The British Buying Commission had offices in both Washington and New York and I contacted both offices to ascertain if I could dispose of the tanks to the British Buying Commission. Then I contacted various oil companies in the United States to see if they could use the tanks.

Q. If you did not think the application would be granted what was the reason for the appeal?

A. The reason was the fact that the materials in question were already fabricated and manufactured and had been sold bona fide before any embargo was announced, and it was our thought at the time that there was a possibility that they would permit the shipment because they had been made and completed while it was legal to do so. That was the basis upon which our attorney in Washington was proceeding. After the denial of the appeal and our inability to dispose of the tanks and on my return to Seattle and before I went to Mexico I negotiated

(Testimony of William Shenker.)

with James Sullivan, General Manager of the Equipment Storage Company in Chicago, Illinois, for the physical storage of the tanks.

Referring to sheet 1 of Exhibit A-11, I was handed that sheet in the office of the Takahashi Company in Seattle. Last night I examined such files as Mr. Takahashi now has and found and brought to court the various documents covering the Sullivan-Equipment Company transaction on storage. I made arrangements with the Equipment Storage Company for the physical storage of the three tanks in question. I tried to sell them to them in April, 1941, when I first negotiated the storage. Eventually one of the three tanks was sold to the Equipment Corporation of America. I sold one of the other tanks to the Portland Gas and Coke Company of Portland, Oregon. I sold the other one to the Shell Oil Company and it went to some location in California. [142]

Cross Examination

By Mr. Dennis:

Q. I want to try to get these dates straightened out.

A. In January, 1941, I was in Portland, Oregon, or Seattle and possibly for one or two days during that month in San Francisco. I left for Washington on the night of the 5th of February and was there about five or six days. From there I came back to Denver. I went back to Kansas City and then to Denver, Denver into Portland and then to

(Testimony of William Shenker.)

Seattle. A great deal of it was by air. I was a couple of days on the route back. It might have been three or four. I was down in San Francisco part of the time in February, 1941. I might have spent a day in Vancouver. I was perhaps five or six half days in Seattle in February, 1941. I was in Portland all of the year 1941 that I wasn't traveling. I would say perhaps I was ten to twelve days in Portland during February, 1941. In March, 1941, I was in Portland or Seattle or San Francisco. During the month of March we were shipping commodities out of San Francisco and out of Portland and out of Seattle. I had charge of the purchasing of those commodities. So my attention would be directed to whichever town required *by* time and attention. The last part of the month is when I left for Washington, somewhere around the 20th. I stayed in Washington two weeks or more. I was in Washington until after the application was filed, I think the 16th of April. I left the day the application was filed. From there I went to New York City and spent a day. From there I flew to Chicago; that was about the 18th or 19th of April. I was in Chicago not to exceed two days and a half. From Chicago I went back to Seattle. I was in Seattle the latter part of the month of April and stayed in Seattle and Portland during the rest of that month of April, except that I went to Vancouver [143] for a day or two. Then I left for Mexico, that is, in the latter part of April or early May. I was there, to the best of my recol-

(Testimony of William Shenker.)

lection, until the middle of June. I think I left Mexico the last week of June. From Mexico I went to Texas by plane. I spent a few days in Houston and a few days in Dallas and Corpus Christi; perhaps a week or so in Texas. From Texas I went to Denver, Colorado and spent two or three days; from there up to Casper and from Casper, Wyoming, back to Portland. I stayed in Portland practically all the time except for flying up to Seattle, then returned to Portland and stayed until some time in September or October, when I went back to Chicago. From about the middle of July I was in Seattle, Vancouver, or Portland, except for one or two occasions when I went down to San Francisco to try to sell these tanks to the oil companies. All the while I communicated with Mr. Takahashi by letter and telephone. There might have been some telegrams. Mr. Takahashi did not tell me anything in regard to any sale in China. There was no mention to me of the Hua Hsin Company during that time. I never heard of that company until the previous trial of this case. When the embargo went on the sales price of scrap steel was more affected than steel plates, because there was no outside demand and the local mills reduced their prices immediately. It is not true that this shipment to the Prevedora Company was cancelled due to the fact that it could be sold for just as much here as it could down there in Mexico.

Q. You could take and sell that plate, pay the

(Testimony of William Shenker.)

freight on it to Mexico and get more money in Mexico than you could in the United States?

A. At that time this firm was paying more for this type of plate, because they were getting the cream of the plate, whereas if they came to this country to buy they would have to [144] buy all of it. The plate referred to had nothing to do with the three new steel plate tanks. The only person whose name I recall at this time to whom I spoke in Washington, D.C. in regard to the sale of these three new steel tanks is Colonel Scott before mentioned. I spent about half an hour with him. In New York City I spent about thirty minutes, until I got to the man I was told who could discuss the matter intelligently, and then I was told that they had no market. I spent about ten minutes with the latter, but he recommended that I take it up with the Canadian authorities. I didn't personally talk with the Canadian authorities, but I got our Manager in Vancouver to take it up with them. I personally talked with the Shell Oil Company, but I do not know the name of the individual I spoke to, but he bought the tanks and we were paid for them. The sale was made in October, 1941. In March he didn't care for the tank, but in October he bought it. There was no difference in the market between April and October. The reason for the delay was that they were trying to get a welded tank which they thought they could get delivery on, but when the delay in deliveries came up, from the mills, they resigned themselves to using a riveted

(Testimony of William Shenker.)

tank in lieu of a welded tank and bought what we had on hand for spot delivery. The next company I tried was the Standard Oil Company. I talked with a personal friend of mine who was Manager of the Portland office, a Mr. Burns. The next was the Portland Gas and Coke Company. I now know the name of the person in that company that I talked with, because I have been doing a lot of business with them, but at the time of the last trial I did not.

I practiced law at one time.

The form shown by plaintiff's Exhibit #29, part 3, was not the proper form, and the next one, dated April 16, was used. [145] The difference was that certain information had to be attached that was not on the original. I did not tell Mr. Ewers that the name of the purchaser was the Japanese government. I did not know then that the Government of Japan was the actual purchaser and do not know that at this time.

THOMAS MASUDA,

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bassett:

My name is Thomas Masuda. I was born in Seattle and have lived here all my life until recently. I attended the fourth or fifth grade school, then I

(Testimony of Thomas Masuda.)

finished the rest of my elementary high school at Ellensburg, Washington, and my university education at the University of Washington, from which I am a graduate. I was admitted to practice at the Bar of the State of Washington in 1929, and was practicing here until the time of my evacuation. I am now located at Poston, Arizona, which is the W.R.A. Relocation Center for Japanese.

I am acquainted with Mr. Takahashi and Mr. Osawa, the defendants in this case. During my practice I acted as Mr. Takahashi's attorney. Mr. Takahashi called on me some time about the 3rd day of November, 1941, in connection with some request that had been made upon him by the Customs Department or agents of the Customs Department of the United States. I think it was the 2nd, rather than November 3rd, anyway it was a Sunday. He had some difficulty in reference to Mr. Osawa's entrance into this country when he returned on November 2. The Customs had questioned both Mr. Takahashi and Mr. Osawa and he wanted me to find out what the whole situation was about. He asked for advice about certain papers that the agents wanted. He was [146] willing to deliver the papers and I advised him to do so and cooperate fully with the Government and assist them in their investigation. So far as I know he made available to the agents everything that they wanted in the way of papers and documents.

(Testimony of Thomas Masuda.)

Cross Examination

By Mr. Griffin:

I was not able to find out from conferences with Mr. Atherton or the Government officers what they were looking for or what they were investigating for.

Redirect Examination

By Mr. Bassett:

I did not know what Mr. Takahashi had been arrested for.

Witness excused.

Mr. Bassett: We would like to recall Mr. Takahashi.

The Court: Mr. Takahashi may take the stand.

CHARLES T. TAKAHASHI

Recalled as a witness on behalf of the defendants, having been previously sworn, resumed the stand and further testified as follows:

Direct Examination

Mr. Dennis: Of course, I will reserve the right to cross examine him, not only on this but on other matters.

Q. (By Mr. Bassett) Before we adjourned Friday "A-10" was incomplete and since that time a letter has become a part of that exhibit which the jury has not had an opportunity of hearing. I will ask you to state whether or not that is a letter written by you in connection with this application?

(Testimony of Charles T. Takahashi.)

A. Yes, sir.

Q. So that the jury may know what we are talking about, I wish you would tell them what application that is.

A. That is the application for eighteen old tanks which the [147] State Department returned to us "no license required".

Q. This is a letter which you wrote in connection with that application?

A. Yes, sir. And the photostatic copy of a letter on top is the answer of Mr. Ballinger, the assistant collector, to my letter.

Mr. Bassett: At this time I would like to read that letter to the jury, your Honor. It wasn't read before.

Members of the jury, the letter of Mr. Ballinger was read to you but at that time this letter wasn't a part of the exhibit. It wasn't available, but since has been made a part of the exhibit.

This is dated "December 16, 1940", addressed to Mr. O. W. Dam, Deputy Collector of Customs, Federal Building, Seattle, Washington.

(Letter read to the jury)

Referring to defendants' "A-11" for identification, which purports to be a group of letters, that is, correspondence carried on by my company with the Equipment Storage Corporation. One of these papers is a wire signed by me as President of this Company which we sent. The yellow sheets are copies of letters we sent to the company. The letters addressed to our company were received by me

(Testimony of Charles T. Takahashi.)

at the time mentioned in each letter. The correspondence refers to the three new tanks which are involved in this prosecution.

Mr. Bassett: We now offer in evidence defendants' A-11.

The Court: The court will admit the Exhibit A-11, upon the ground that by numerous questions they have already been put before the jury.

Group of letters, previously marked "A-11" for identification, received in evidence. [148]

(Whereupon Mr. Bassett read Exhibit A-11 to the jury)

Q. (By Mr. Bassett) Mr. Sullivan's first letter speaks of not letting certain people find out from them where these tanks came from or where they were manufactured. What was the reason for that?

A. The main reason of that was in our business, our whole import and export business, we always try to keep the source of our supply from our competitors. In other words, the tanks are made by the Graver Tank people and we don't want our competitors to know who is the maker of our commodity. We are the owners and if they want to buy a commodity we sell it and it is our own business who makes it.

Mr. Bassett: At this time the defendant Takahashi rests.

Mr. Griffin: The defendant Osawa rests..

The Court: Is there any rebuttal?

Mr. Dennis: No rebuttal, your Honor. The Government rests.

Jury excused until 9:30 the following morning.

The Court: The jury is gone. All right you may proceed.

Mr. Griffin: The defendant Osawa, at this time, the case being closed, moves for a directed verdict of Not Guilty in behalf of that defendant, separately as to each and every count of the indictment, on the grounds and for the reasons stated at the time the motion was made at the close of the case for the Government and now, since the evidence has developed beyond any question, that to submit any issue in this case to the jury, so far as the defendant Osawa is concerned, would be to permit the jury to speculate, and to base an inference upon speculation and suspicion without any governing basic fact upon which it is warranted or could be warranted in finding a verdict of guilty.

That applies with reference, the motion, with reference [149] to the conspiracy count because there was no evidence in this case, either written or oral, of the existence of any conspiracy as between the defendant Osawa and any co-defendant at all. At most, it would be inference based upon inference and speculation based upon speculation, and presumption founded upon presumption, and each presumption omitting the primary presumption that all men are supposed to be honest in their dealings.

It is the position of this defendant that there is nothing in the record in this case that the government has made, nor in the case that the defendant

has made, without rebuttal, that in any wise warrants submitting the matter of conspiracy on the part of the defendant Osawa to the jury. That is Count 1 of the indictment.

As far as Count 2 is concerned, and the same is true of Count 3, they are not based upon conspiracy but upon a physical act committed.

The evidence in this case shows, without any dispute, that Osawa had nothing to do with any physical act insofar as a crime is charged in Count 2 or Count 3. Actually at the time of the claimed charge that a physical act was committed within the jurisdiction of this court, and particularly within the District of Columbia, Washington, D. C., or in Seattle, Washington, he was without the jurisdiction of the Court and not physically a party to the discussion of Exhibit A, the application attached to the indictment, had absolutely no connection with it nor anything to do with it.

And the same is true of Count 3.

In addition to that the defendant moves to be withdrawn from the evidence in this cause and from consideration by the jury of all the documents against which the basic motion has been made that they were wrongfully seized and permitted for [150] use, and introduced in evidence in this cause.

Mr. Bassett: At this time the defendant Takahashi renews the motion, as it involves the evidence, which he made at the close of the Government's case.

And at this time he moves for a directed verdict of Not Guilty as to each of the three counts, for the

reasons stated at the close of the Government's case, at which time I think Your Honor indicated that you did not desire to hear any further argument, that you had considered it all at the previous trial.

The Court: I didn't wish to hear any argument unless it was new argument that I hadn't heard.

Mr. Bassett: We have nothing new to offer, Your Honor, in addition to what we have already presented in the way of argument.

The Court: The motions interposed on behalf of the defendant Osawa and each of them are denied and overruled; and exception is allowed.

The motions and each of them interposed on behalf of the defendant Takahashi are denied and overruled and exception allowed.

(Whereupon at 4:40 o'clock p. m., a recess was taken until 9:30 o'clock a. m., October 7, 1942.)

Seattle, Washington

October 7, 1942

9:30 O'Clock A. M.

(The jury resumed their seats in the jury box and the following proceedings were had and done in their presence and hearing.)

(Whereupon counsel for the Government and counsel for the defendants argued the case to the jury, after which the Court instructed the jury as follows:) [151]

The Court: Members of the Jury, you have had this case somewhat longer than was expected. Those

of you who have served on juries before know that frequently cases last longer than they are expected to.

The Court appreciates the attention that you have given to this case. The Court knows that you are going to consider this case seriously as an important case; that you are going to determine the issue upon the evidence as it has been received under the instructions of the Court as to the law touching this case.

In Federal Court, different from state court, the rule as to instructions is that the Federal Judge instructs the jury after the argument and not before. And there is a reason for this rule in the Federal Court. There is another distinction between instructions in Federal Court and in state court concerning which you will be later advised.

You have heard the evidence in this case. You have heard the arguments of the counsel upon both sides. Jurors realize that they do not sit in a box to listen to the argument of counsel as though they were hearing a debating team, to determine the issue upon that side which makes the best speech. The jury has the same obligation that a Judge has when a Judge hears a case without a jury. And the Jury's obligation, like that of the Judge, is—regardless of the argument of counsel or regardless of which argument they think is the better, as an argument,—the Jury and the Judge should search the evidence to determine what the real fact is; and that is your duty.

It now becomes your further duty to listen to the instructions of the Court and then remember them. You will [152] receive no copy of these instructions. And when you retire to the jury room, you can only take with you your recollection of what the judge has said.

In this case there are two defendants on trial on three counts of the indictment. In each of these counts the defendants have entered a plea of not guilty, which places upon the prosecution the burden of showing beyond a reasonable doubt, as that doubt will be hereinafter explained to you, the truth of every material allegation of the indictment, beyond a reasonable doubt. You will later also have explained to you what is meant by "every material allegation of the indictment."

And you may be advised now—as the Court will later tell you—that an indictment is not a blueprint. An indictment is the method by which a grand jury, in behalf of the People of the United States, charges persons so that they may be advised of what they are charged with.

And if there be some immaterial matters in the indictment, the failure of the prosecution to prove those immaterial matters shall not be an excuse to any jury to free any guilty man or guilty men, shown by the evidence beyond a reasonable doubt to be guilty.

It is not the purpose of courts that if the prosecution proves the material parts of an allegation beyond a reasonable doubt that any defendant should

be released because some immaterial allegations have not been established.

In this case you will consider each count of the indictment separately and will vote as to each count [153] separately as to each defendant. The indictment against the defendants Charles T. Takahashi and Edward Y. Osawa, as I have stated to you, consists of three counts. You will later be given a copy of the indictments and later in these instructions I will more particularly describe the charges on each of the three counts. At this time a summary of the three counts will suffice.

The first count charges a conspiracy to violate the law and Presidential Executive Order concerning three steel storage tanks and accessories.

The second count, in brief, charges that these two defendants on trial and others not under arrest violated a certain executive order by designating China as the country of ultimate or final destination instead of Japan; it being charged that the defendants knew that Japan was intended as the actual country of ultimate or final destination.

The third count, in brief, charges these two defendants and other persons not under arrest with making false or fraudulent statements in connection with an application for a license to export the same three storage tanks and accessories, in violation of another Federal Statute which makes it a crime to make or cause to be made any false or fraudulent statements or representations in such application within the jurisdiction of any department or agency of the United States.

You are instructed that to find any defendant guilty of the offenses charged in the three counts or [154] any of them of the indictment, it is not necessary to find that each defendant personally committed all of the acts charged in such count or counts. If you find that any defendant aided or abetted or counseled or commanded or advised or induced or procured the commission of the crime charged in any counts or count, then that defendant is just as guilty as to that count as if he individually perpetrated the entire crime himself; and you must find him guilty as charged.

The issue to be determined in this case is of importance to the government and to the defendants and requires your careful thoughtful and honest consideration. It is your duty, and I am confident you will do your duty as jurors under the oath that you have taken to conscientiously, seriously, and free from prejudice and free from sympathy, return a true verdict under the evidence and these instructions as to each defendant and as to each count.

You can readily understand that the government can only be maintained by the endorsement of the law. You as jurors are not concerned with whether or not the law herein involved or the presidential orders or proclamations involved ought to have been enacted or issued or declared, nor are you concerned at all with any punishment that may be imposed under the statutes in this case in the event a verdict of guilty may be returned.

If congress, the law-making body, and if the president under the authority given him by con-

gress makes a law with relation to a particular policy or [155] rule of conduct or issues an executive order pursuant to any such law, it is necessary that the people should fairly and honestly live up to such law and such executive order. And it is necessary that the public officials, and jurors are public officials, should fairly and honestly enforce such laws and such orders.

You are instructed that it is not the policy of the law that a verdict of guilty should be returned against anyone on trial for any crime unless such verdict is supported by the evidence beyond a reasonable doubt; but it likewise is against public policy that any guilty persons or person should escape, if the evidence shows beyond a reasonable doubt that such person or persons are or is guilty.

It is the duty of the court to instruct you as to the law governing the case and it is your duty to take the law from the court and accept that to be the law as stated to you by the court, notwithstanding any statement or contention of any attorney as to what the law is or ought to be; and despite any opinion of your own that the law is different or ought to be different than the court states it to be. The mere fact that you may not have favor for any particular law or for any particular executive order can not rightfully be by you permitted to excuse any violation thereof.

And likewise, any opinion that may have been asserted that any law or any executive order should have been passed or issued before it was can not excuse any violation at all thereof after same be-

came effective. Even if it might have been better, if any [156] executive order had been issued before it was issued, such can not be any excuse for anyone violating same after it was issued.

You are instructed that the law presumes every defendant in each and every case charged with any violation of any law to be innocent until he is proven guilty by the evidence beyond a reasonable doubt. This presumption continues throughout the entire trial and until the jury has found that this presumption has been overcome by the evidence beyond a reasonable doubt.

The indictment returned herein is merely the method provided by law whereby the United States, through a grand jury and on behalf of the people, shall accuse one or more persons of violation of the law, and whereby the one or ones accused shall be advised of the accusations against them or him so that they or he may defend against such. The fact of an indictment having been found and returned by the grand jury against anyone gives rise to no inference that the one accused is guilty of any offense. The matter of guilt is the matter of proof. The indictment is the charge or the method of placing the defendants on trial.

The instructions that I give you are the method provided by law whereby the court shall advise a jury of the law applicable to the particular case and which must guide the jury in consideration of the evidence, and which must guide the jury in determination of what the jury's verdict shall be. These instructions are to be understood, interpreted

and applied by you as a connected body, and as an entirety. [157]

You will disregard any statement made by counsel on either side of this case as to what any testimony has been unless *born* out by your final recollection thereof. You are likewise to disregard any testimony which may have been stricken out by the court. You must likewise disregard any question or answer thereto to which the court has sustained an objection.

You have already heard me use the term, "reasonable doubt" and you undoubtedly are interested in knowing just what that means in law and just how strong the evidence must be to be said to be sufficient to convict. You are instructed that proof beyond a reasonable doubt does not mean the evidence shall establish the guilt of the defendants or either of them beyond all possible doubt. The law does not require absolute certainty of guilt before there can be a verdict of guilty at your hands.

The expression, "a reasonable doubt" means in law just what the words imply, a doubt founded upon some good reason. A reasonable doubt must arise from the evidence or lack of evidence. A reasonable doubt must not arise from sympathy. A reasonable doubt must not arise from a desire to avoid performing a disagreeable duty. A mere misgiving founded upon mere possibility does not constitute a reasonable doubt. Only such doubt as a sensible, honest-minded man or woman would reasonably entertain in an honest and impartial investigation to ascertain the truth about a matter of life

as serious as the one involved here would constitute a reasonable doubt. [158]

In order to warrant conviction of the defendants, or either of them, as to the charge against the defendants, the evidence need not be so strong as to exclude all doubt or possibility of error. But the evidence must be strong enough to exclude all reasonable doubt.

If after considering all of the evidence in this case, you can say that such leaves in your mind a firm and abiding conviction of the guilt of the defendants, or either of them, of the charges in the three counts of the indictment, or any of them, then you are convinced beyond a reasonable doubt as to such defendants, or defendant, as to such counts or count, and then it would be your duty to find the defendants, or such defendant, guilty of such count or counts. If not,—that is, if you do not have a firm and abiding conviction of the guilt of the defendants, or either of them, as to any count or counts, then you have a reasonable doubt and you should find the defendants, or that one, not guilty as to such counts or count.

It has sometimes been said that unless you are convinced of the guilt of a defendant to a moral certainty that you have a reasonable doubt. It is unnecessary, however, that the evidence prove either of the defendants guilty beyond every doubt because there are few, if any, things in the domain of human knowledge that can be established by such positive proof.

You are instructed that what punishment the defendants, or either of them, may receive in case they or either of them may be convicted is not to be considered by you in any respect or for any purpose in arriving at [159] your verdict. The matter of punishment is for the court alone as provided by law; and such can not in any wise properly be considered by you at all in arriving at the guilt or innocence of the defendants or either of them.

It has, however, been suggested in argument in this case that if the defendants are found guilty that they will be sentenced to the penitentiary. You are not to consider whether they will be or not. The court, however, in view of such argument, will tell you that the court is not required to compel either of the defendants, in the event they are found guilty, to serve any time whatsoever in any penitentiary; although the court can impose such a sentence if the court deems proper, in the light of the information it would have at the time of sentence, in addition to what information it might have now; or the court could impose a county jail sentence or merely a fine. But whether the court would give the defendants a substantial sentence or one not substantial is for the conscience and the judgment of the court alone.

There are two kinds of evidence,—the direct and circumstantial. Direct evidence is that which a person observes or sees or which is susceptible of demonstration by the senses. And circumstantial evidence is proof of such facts and circumstances concerning the conduct of the parties which concludes

or leads to a certain inevitable conclusion. Circumstantial evidence is legal and competent as a means of proving guilt in a criminal case. [160]

As a matter of fact, in conspiracy cases it would be impossible to convict in many instances unless circumstantial evidence could be introduced and relied upon by the jury. But the circumstances must be consistent with each other, consistent with the guilt of the parties charged, and inconsistent with their innocence and inconsistent with every other reasonable hypothesis except that of guilt. When circumstantial evidence is of that character, circumstantial evidence *along* without any direct evidence whatever is sufficient to convict.

Likewise, if a combination of direct and circumstantial evidence is of the character I have just mentioned where it convinces the jury beyond a reasonable doubt, that is also sufficient for conviction. You should decide the case wholly upon the testimony and evidence introduced at the trial, and under these instructions of the court.

No person, regardless of ancestry, should be convicted unless the evidence establishes his guilt beyond a reasonable doubt as such reasonable doubt has already been defined to you. But no person, regardless of ancestry, is privileged to violate the law.

In this case as in all cases, regardless of the charge, you are only permitted to render a verdict of guilty if the evidence so convinces you beyond a reasonable doubt. Prejudice can not be substituted for evidence. But if you are convinced of

the guilt of the defendants or either of them beyond a reasonable doubt by the evidence, then it is your duty to convict and [161] you have no right whatsoever to vote for acquittal for the purpose of proving to someone that you are not prejudiced. In other words, if you are convinced beyond a reasonable doubt from the evidence and the reasonable inferences therefrom that the defendants are guilty, it would be a violation of your oath to lean backwards and vote not guilty.

It is psychologically impossible for you to enter into the minds of the defendants and determine the intent with which they operated. You must, therefore, determine the motives, purposes and intents from the testimony, including the exhibits which are in evidence and you will consider all of the circumstances disclosed by the evidence and the witnesses, bearing in mind that the law presumes that every man intends the legitimate consequences of his own acts.

The first count of the indictment charges Charles T. Takahashi and Edward Y. Osawa with having entered into a conspiracy with one, M. Ikuta, Kono alias Willie Chang, and M. H. Kiang. In brief, it is charged that the defendants, Takahashi, Osawa, Kono alias Chang, and Kiang, within one year prior to the second day of November, 1941, and continuing to and including November 2, 1941, at Seattle, Washington, at Washington, D. C., at Tokio, Japan, at Shanghai, China, and other places to the grand jurors unknown, did then and there knowingly, wilfully, unlawfully and feloniously combine and conspire, confederate and agree to-

gether and with each other and with other persons, to the grand jurors unknown, to violate that certain paragraph of the [162] executive order effective April 15, 1941, providing as follows: "6. The country designated on the application for license as the country of destination shall in each case be the country of ultimate destination. If the goods to be exported are consigned to one country, with the knowledge that they are intended for transshipment thence to another country, the latter country shall be named as the country of destination." Which executive order was authorized by an Act of Congress.

And also that they did further conspire to violate the provisions of Section 80 of Title 50 of the United States Code, it being charged that it was the purpose of said conspiracy and the intention of the said persons so conspiring together to knowingly, willingly, unlawfully and feloniously export three steel, dismantled, storage tanks by causing China to be designated on an application for license, for the export of such three tanks, as the country of destination when, in fact, the country of ultimate destination was Japan, as they, and each of them, well knew.

It is also charged in the first count that it was the object of the conspiracy and the object of the persons so conspiring together to violate Section 80, Title 18 of the U. S. Code, they knowingly and willfully, to make and cause to be made fraudulent explanations in an attempt to export the said three tanks.

Count one further charges that the defendants, including the two now on trial and the three others who have not been arrested, with having committed certain overt acts; that is, affirmative acts in furtherance of [163] the conspiracy. It is not necessary for the government to prove all of the 20 or 22 overt acts set forth in the indictment. It is sufficient if only some of them be proved. Actually, only one of the 22 need be proved. But at least one of the overt acts must be proved to have occurred in Seattle, Washington, after April 15, 1940, and before the defendants left the dock on November 2, 1941.

If one overt act is proved to have been done in Seattle after April 15, 1940, that is sufficient as far as the proof of the overt acts is concerned. There may be proof of more than one but it is not required that the others be shown to have been committed at Seattle. But any of them may be proved to have been committed at Seattle.

Count 2 of the indictment charges that the defendants Takahashi and Osawa, Ikuta, Kono alias Chang and M. H. Kiang, the last three not being on trial, on or about the 16th day of July, 1941, at Seattle, Washington, knowingly, wilfully, unlawfully and feloniously violated the provisions of the executive order I have already mentioned, in that it is charged that the defendants in an application dated July 16, 1941, for a license to export the same three steel storage tanks, did designate China as the country of ultimate destination instead of Japan, the true destination.

As a matter of law, steel storage tanks are included in the export control schedule number one, duly issued March 15, 1941, to take effect on April 15, 1941, making it a requirement specifically to obtain a license to [164] export such articles. Ultimate destination means the last or final destination.

Count 3 of the indictment charges that the two defendants on trial, and the same three other persons, on or about the 16th day of July, 1941, at Seattle, did knowingly, wilfully, unlawfully and feloniously make and cause to be made false and fraudulent statements and representations in an application for a license to export the same three steel storage tanks; it being charged that the false and fraudulent statements consisted of statements that China was the country of ultimate destination.

This count 3 is brought pursuant to the statute which says that it is a violation for anyone to make or cause to be made any false or fraudulent statement or representation in any manner within the jurisdiction of any department or agency of the United States. Wilfully means intentionally. The word false means knowingly untrue or knowingly incorrect. Fraudulent means untrue and made with a design to influence action by another who relies thereon.

In this case it is not necessary for the government, with respect to count 3, to prove that the statements in the application were both false and fraudulent: either is sufficient. Although the count charges that they were false and fraudulent, under

the law all that is necessary is that the evidence prove that they were false or fraudulent.

You are instructed that a crime may consist of many parts but each person consenting to the commission [165] of the offense and doing some part in connection therewith which is either an ingredient of the crime or immediately connected with or leading to its commission is as much a principal as if he had with his own hand committed the whole offense.

And if in law one aids, counsels, procures or assists another to do an act in violation of law, even if the one so aiding, counseling, advising, procuring, inducing or assisting in its commission is far away, or even across the ocean, and regardless of whether the one who actually does the act knows that he is violating the law, the one so aiding, counseling or assisting in the commission of the crime, no matter how far distant, is guilty as a principal and is held to be constructively present where the crime was committed.

A conspiracy may be defined as a combination or partnership or understanding between two or more persons to do an unlawful act or acts or to do a lawful act or acts by unlawful means; and the doing of some act or acts by some one or more of them for the purpose of carrying the conspiracy into effect.

It is not necessary for all of those who conspire to do any act at all. If two or more conspire and one does some affirmative act to further the conspiracy, then all of them are liable; the partnership is liable.

It is not necessary that the act or acts done should actually accomplish the purpose of the conspiracy. It is only necessary that such acts be done for the purpose of carrying the conspiracy into effect, regardless of whether the conspiracy is actually finally [166] accomplished or not. In other words, the fact that none of the three tanks were shipped out of the United States does not defeat the charge. In considering your verdict as to the defendants, Charles T. Takahashi and Edward Y. Osawa, with respect to count one you will first consider whether or not a combination or understanding to do the unlawful acts existed at any time as charged in the indictment; that is, existed at any time after April 15, 1941 and up to November 2, 1941. And if you find from the evidence beyond a reasonable doubt that such a combination or understanding or partnership did exist, even if only for a few days, or if only for one day, you will then consider whether the defendants Takahashi and Osawa, or either, at any time during the life of such conspiracy became parties to the understanding which could be either a written or oral understanding or agreement or even merely an implied or tacit understanding.

If you find from the evidence beyond a reasonable doubt that such a conspiracy was entered into by two or more persons and that some one or more of the persons to the conspiracy did some one or more of the overt acts charged in the indictment, one of which must be at Seattle, after April 15, 1941, as I previously stated, for the purpose of aiding or assisting in the forwarding of the con-

spiracy and that any such act was done not later than November 2, 1941, before the defendants left the dock, then each of the defendants who entered into such conspiracy, or who became a party to it at any time after its formation, at any time before the [167] doing of the last overt act, whether or not he actually did anything other than join the conspiracy, would be just as guilty as the one who planned the conspiracy or who performed the overt acts. It is not necessary that the government establish the exact time of the formation of the conspiracy. If the conspiracy existed, it ended November 2, 1941, upon the search of the defendants on trial at the dock. Mere relationship between the parties, so they could perform certain acts which may tend to a general plan, is alone not sufficient. There must, in addition to any such relationship also be knowledge and conscious participation in an unlawful enterprise. If there were such, then it is immaterial what the party did, how little the service was that they performed, what profit, if any, they were to receive. It is immaterial whether or not they received or were to receive any profit at all.

And where two or more persons are proved to have joined together for the same illegal purpose, any act done by one of the parties, any statement made by one of the parties, any communication by word of mouth, by telephone, by telegraph, by letter, in furtherance of the original, concerted plan and with reference to the common object during the existence of the conspiracy,—in this case not later than November 2, 1941 as aforesaid,—is

in the contemplation of law the act and word of each of them.

There is no need at all to the parties of the conspiracy knowing what each of the others did or what each of the others was to do. Any act or communication [168] or declaration made or said by any member of the conspiracy in furtherance thereof is competent proof against any other member during the time the other member is a party.

If they are one of the partners in the conspiracy during the life thereof, each partner who is a party in the conspiracy acts for every one and all act for each.

It is charged in the conspiracy count of the indictment that the defendants conspired to violate two different statutes of the United States. It is not necessary that the evidence prove a conspiracy to violate both of the statutes. It is sufficient if a conspiracy be proved by the evidence beyond a reasonable doubt to violate either one or both of the statutes as charged in the indictment; and that one or more affirmative acts was done as I have stated above for the purpose of furthering such conspiracy.

Any overt acts which happened before April 15, 1941, shall only be considered as history for the purpose of aiding the jury in understanding the relation of the parties and what knowledge they had after April 15, 1941.

It is not necessary at all that either of these two defendants were members of the conspiracy at the inception. It is not necessary that these two

joined at the same time. If there was a conspiracy, as charged in count one of the indictment, and if thereafter the two defendants on trial or either of them at any time before November 2, 1941, joined the conspiracy, knowing of its unlawful purpose, the defendants or such one who so joined would become liable for the acts of [169] each of the conspirators during the period of their participation, whether he knew of such specific acts or not. In other words, that is the risk of one who joins a criminal partnership.

It is not necessary that it be proved that the defendants agreed either orally or in writing to commit the crime charged. It is sufficient if the evidence shows that there was a conscious participation knowingly in a criminal conspiracy as charged in the indictment.

If, for instance, M. Ikuta and Mr. Kono of Japan had a plan to violate these laws and executive order of the United States, to get these three tanks into Japan by way of China or under the pretense that they were going to China. And if days or weeks or months after they so decided it is proved beyond a reasonable doubt that the defendants or either of them finally learned of such unlawful design, and participated even to a small degree in furtherance of such design, such defendant would be guilty.

It is not necessary at all that the evidence prove that this conspiracy was started at any time in 1940. If the evidence convinces you beyond a reasonable doubt that it was formed on the 27th day of June,

1941, when the telegram was sent by Miconi Shoko Company to Mr. Takahashi, that would be sufficient, providing that the evidence shows that the defendants joined it or one of them joined it sometime, knowing of its unlawful design, before the doing of at least the last affirmative act, which would need to be committed in Seattle.

If you are convinced by the evidence beyond a [170] reasonable doubt that the defendant, Edward Y. Osawa, aided in or counseled or advised or procured or induced or assisted in the commission of the crimes charged in counts 1, 2 and 3 or any of them, then in law the said defendant Osawa would have been held to have been constructively present where the crime was committed even though in body he was thousands of miles away.

It is not necessary that you be convinced by the evidence beyond a reasonable doubt from evidence produced by government witnesses. It is only necessary that the evidence produced at the trial, regardless of when it was introduced or who so introduced it, so convinces you.

The indictments in each of the counts are long and technical. To a large degree they are directed to the court. And the Court instructs you that each such indictment and each of the three counts is legally sufficient, regardless of anything that may have been told to you in argument in this case.

You are the sole and exclusive judges of the weight and credibility to be allowed the testimony of the witnesses, both for the government and for the defendants. In weighing the testimony of the

various witnesses it is your duty to determine *who* testimony is most worthy of belief from the appearance and demeanor of the witnesses, their manner of testifying, their apparent frankness or lack of frankness, their bias or prejudice if any is shown, their apparent intelligence or lack of it, their interest in the result of the case if any, the reasonableness or [171] unreasonableness of their testimony, and to give credit accordingly.

You are further instructed that if you believe that any witness, who has testified in this case, has knowingly sworn falsely as to any matter or circumstance material to the issues in this case, then you are at liberty to disregard the entire testimony of such witness except in so far as it is corroborated by the testimony of another deemed by you worthy of belief or by the facts and circumstances proven on the trial.

Those rules apply to each of the defendants on trial as well as to each and every other person who has testified as a witness. When a defendant testifies in his own behalf, you may consider what interest he has in the outcome of the case, and whether that interest has been sufficient to lead him to deny things that really are true or to testify to things that are not true. You will weigh the testimony of each defendant in the same manner you would weigh the testimony of anyone else, considering his position.

You are required to take the law from the court as a matter of duty, under your oath as jurors. But as to the facts, what the evidence proves, what

weight you are to give the testimony of the various witnesses, and what inferences you should draw from the facts and circumstances proved, such are exclusively your function. And in respect to that you are independent and controlled neither by any opinion of the court or by the arguments of counsel.

No opinion that the court may have nor that you may [172] think the court may have as to the guilt or innocence of the defendants or the credibility to be accorded the testimony of any witnesses or as to the inferences to be drawn from any circumstances proven is controlling or binding upon you. It is for you to determine the facts in this case. The responsibility as to the verdict as to each defendant as to each of the three counts is upon you.

That responsibility remains with you. It is a duty which you can perform only by honest determination and by your best judgment, reached after deliberating among yourselves, from a common sense standpoint and a reasonable viewpoint taken by you all.

When you retire to the jury room to deliberate upon your verdict, you will first select one of your number as foreman. And when all of you have agreed upon your verdict as to each of the defendants as to each of the three counts, your foreman will sign such verdict and you will then return with such verdict into court.

You will take to the jury room the indictment, the form of verdict and the exhibits which have been introduced in evidence. In the verdict you will find blanks as to each defendant as to each count. I will read a portion of the verdict to you.

“We the jury in the above entitled cause find the defendant Charles T. Takahashi blank guilty, as to count one of the indictment filed herein.” Before “guilty” you will fill in the word “is” or the word “not” in the blank, as the case may be. You will do the same as to counts 2 and 3.

And then the verdict goes on to read, “and we [173] further find the defendant Edward Y. Osawa blank guilty as charged in indictment one herein.” And as to each count, with respect to Edward Y. Osawa, you will likewise fill in the word “is” or the word “not” as you find him guilty or not guilty as to each such count.

Summarizing the indictment, count two thereof charges that the defendants violated the executive order issued pursuant to congressional act. Count three thereof charges that the defendants violated an entirely different act which prohibits any false or fraudulent statement in any application. While count one charges that the defendants conspired together with the plan and purpose of violating such executive order and such law named in counts two and three; and that in attempting to make their conspiracy successful they did certain overt,—that is, affirmative acts. That is, counts two and three charge actual violations of an executive order and an independent law respectively, while count one charges an unlawful association with the intention of violating the same.

The fact that you may think that less counts than three would have been sufficient is no excuse

whatsoever for you not finding each defendant guilty as to all three counts, if you are convinced beyond a reasonable doubt that they are guilty.

You are further advised that if you find the defendants or either of them guilty of either count two or three that necessarily you must find them guilty of the other of counts two and three because if a defendant is guilty of one of those two counts of necessity he [174] is guilty of the other of said two counts.

And you are further advised that if you are convinced by the evidence beyond a reasonable doubt that the defendants or either of them are guilty of either counts two or three, and violated the law in respect to said counts or either of them, with the purpose of assisting someone in Japan in furtherance of the conspiracy charged, then you must of necessity find them not only guilty of counts two and three, but also of count one.

Upon the other hand, if you come to the conclusion that any defendant did not know of the illegal purpose charged in the indictment in count one until after the 16th of July, 1941, but that sometime thereafter such defendant did learn of the unlawful purpose and then cooperated in furthering such purpose and that thereafter and by November 2, 1941, some overt act was done, then you can find such defendant or defendants guilty as to count one, although that particular defendant might not be guilty as to counts two and three.

In federal court, unlike the superior court, the judge is entitled to comment on the evidence. He

is entitled to express his opinion to the jury of whether or not he believes certain witnesses; and in some cases even to tell the jury what his verdict would be if he were on the jury. I am not going to tell you what my verdict would be if I were on this jury. That is your responsibility. But if I did tell you, or what I may say as to the evidence does not bind or control you at all. It would be your privilege to differ absolutely [175] from me or to agree with me if you independently so decided.

Any comment I may make is not for the purpose of binding or controlling you but is for the purpose of aiding you in understanding the instructions, and in illustrating the application of the instructions.

If I happen to mention any particular individual or any particular exhibit or part thereof or evidence, I wish you to know that you are to consider all of the evidence, all of the testimony, of all of the witnesses, and all of the exhibits, and every part of every exhibit whether I mention it or not, and that you are to return your verdict after thorough consideration of all of the evidence.

If at any time I may give a statement as to my recollection as to what any evidence is, if my recollection of the evidence differs from your recollection, you are to follow your recollection, just the same as you are to follow your recollection as against the statement of any counsel. You are the judges of the facts.

In considering all of the evidence in the case it is not sufficient for you to find merely that the evidence was consistent with the theory of the defend-

ants guilt. Before you may find the defendants or either of them guilty, you must be convinced beyond a reasonable doubt that the evidence is inconsistent with their innocence and inconsistent with every reasonable hypothesis except that of guilt.

You are not bound or controlled at all by any bold [176] statement any witness may make. And you are not bound or controlled at all by any bold statement any defendant may have made.

You have a right to consider every statement made by every witness in the light of evidence and in the light of the reasonable inference which you, in the exercise of your common sense, reasonably draw from the circumstantial and other evidence in the case. And if any witness, whether defendant or not, makes any statement which you find to be unreasonable in the light of the testimony and in the light of the reasonable inferences to be drawn from the testimony, then you may disregard such statements, even though there is no other witness who is able to testify to the contrary.

In this case it is my recollection that Mr. Osawa testified that while he was in Tokio, Japan, exhibit 9,—which he says he brought with him from Tokio, Japan, to Seattle on November 2nd—was handed to him by someone, from Mikuni-Shoko Company Limited of Tokio, Japan. He says that he received that letter, as I remember it. That letter recites from the beginning, quote,—it is addressed to “Messrs. China Import and Export Company. As a consequence of our long business discussion with your representative, Mr. W. L. Chang,

we wish——.” Now, in the light of all of the evidence of this case, if you believe that Mr. Osawa honestly believed that Mr. W. L. Chang was the business representative of the China Import and Export Company; in the light of all of the evidence that you have heard, do you believe that Mr. Osawa believed the statement in [177] the last of that letter that the tanks were imported for local storage purposes in Shanghai?

In connection with that letter and in connection with all of the evidence in the case, if Mr. Osawa believed that the letter of July 4, 1941, signed by Hua Hsin Company was an honest order for the shipment of these tanks to Shanghai, do you reasonably think that he would have written on July 15 to Mr. Takahashi to this effect: “We sure are on a spot on the three tanks. I doubt if a day goes by that they don’t call us or say something about them. If we could only get those three tanks out it would be a life saver and they would do almost anything for us.”

And you are entitled in the light of your experience and your common sense to determine if Mr. Osawa honestly believed that the Hua Hsin Company was purchasing these tanks, if he wouldn’t have made a statement in this communication to Mr. Takahashi to the effect that he was not willing to approve the credit account of \$71,700 claimed in the Hua Hsin Company.

And you have a right in the light of all of the testimony to determine whether or not Mr. Osawa

thought any portion of that letter of July 14, 1941, was an honest letter.

As I remember the testimony, Mr. Osawa testified that while this plaintiff's exhibit 9 was brought to him by someone from the Miconi Shoko Company, that he never saw either of the letters—I would like to find exhibit 17—dated July 16, 1941, addressed by Miconi Shoko Company Limited of Tokio, Japan, also to Seattle, [178] Washington, but to the name Takahashi, instead of Chinese Import Company.

In the light of all of the evidence that you have heard in this case and of the exhibits, do you believe that if the Mikuni-Shoko Company would take to Mr. Osawa this exhibit 9, instead of mailing it to the China Import Company at Seattle, that they wouldn't also take to Mr. Osawa exhibits 17 and 18? If you read exhibits 17 and 18, as I know you will, it will be for you to determine whether or not those two letters do not show that it was the plan of the Mikuni-Shoko Company Limited or of Mr. Ikuta, its director, to merely use the Hua Hsin Company as a pretense.

It will be for you to determine if the Mikuni-Shoko Company wished Mr. Osawa to have the one letter, why they wouldn't want him to have the other two letters.

It is also for you to consider in the evidence—I would like to see the telegraph exhibits 10 to 13, inclusive—it is also for you to consider, in the light of all of the evidence, whether a business man of the experience of Mr. Takahashi, receiving these

telegrams, under date of June 27th in code duo and private, under date of June 28th in code duo, and under date of July 5th under code duo, code inverted, and under date of July 8, 1941, under code duo, without realizing what the purpose of Mikuni-Shoko Company was, as you find from the evidence in the light of exhibits 17 and 18.

Do you think it is reasonable that if a man with the experience of Mr. Takahashi, under date of June 27th, [179] received a telegram from a company in Tokio, which included this language, "Do utmost to arrange earliest possible shipment by every possible means oil tanks and tubes. Our customers desire additional oil tanks. Telegraph prospect." And if on or about the next date, by a telegram from the same Tokio Company, dated June 28, 1941, he was advised as follows: "Decided today name of firm is Hua Hsin Company, address 320 Road, Shanghai, China." whether or not he would think that that was an honest sale to the Hua Hsin Company in Shanghai, China, or whether those telegrams would give any possible inference except that Mr. Takahashi was advised that the Mikuni-Shoko Company was telling him that they had decided to use the name of Hua Hsin Company?

In the light of your experience do you think that if this was an honest sale that the Mikuni-Shoko Company would not have used the words, "Tanks have been sold to the Hua Hsin Company" instead of telegraphing Mr. Takahashi, "Decided today

name of firm is Hua Hsin Company" and the other language set forth in this telegram?

My recollection of the evidence in this case is that Mr. Takahashi admitted that he had these four telegrams before he handed Mr. Leo Nye Sing the application of July 16, 1941. From the light of your experience and from the light of what Mr. Leo Nye Sing did in connection with this transaction with Hua Hsin Company, do you think that if Mr. Takahashi had deemed that that transaction was honest, that he would have [180] agreed to pay three percent or any percent for someone to sign his name?

It is for you to determine in the light of your experience whether, if Mr. Takahashi was endeavoring to sell these three tanks other than in the Orient at times when he understood he would be unable to ship them to the Orient, if that were any different than anyone would do; whether they were honest or dishonest, if they were not able to have tanks shipped to the Orient, when they had been ordered from that location.

Under the evidence, as I remember it, the Mexico transaction, as far as the contract is concerned, involved used plats, used steel plates.

Under the evidence, as I remember it, the Mexico company executed an affidavit before a Mexican notary public and someone as a vice consul signed a certificate to the effect that such Mexican notary public was a notary public. It is for you to determine in the light of all of the evidence whether actually that affidavit was true.

That evidence has been introduced by the defendants upon the ground that it shows such good faith on the part of the defendants that they wouldn't be willing to violate any other law in the light of their action in that connection. You have a right in connection with the Mexican transaction to read and consider what Mr. Takahashi wrote as to the Mexican situation.

It is also for you to determine whether or not the Mexican transaction shows such good faith that anyone acting as Mr. Takahashi did would not violate any other [181] law or whether it shows, or whether you may reasonably infer that it shows that when the blacklisted firm was unable to receive any more steel plates, for whatever purpose it wished to receive them, that Mr. Takahashi cancelled the contract after it had been suspended by the Mexico company.

The jury may be advised that the Court sees nothing against the defendants or either of them in the act that Mr. Osawa used some other method than a passport to go to Japan. It was perfectly legal and indicates in no wise any guilty knowledge or any guilty purpose.

The jury has already been advised and will be advised again that there is no unlawful act charged against any defendant which is supported by the evidence prior to April 15, 1941, and anything that the defendants or either of them may have done before that time, as far as this charge is concerned, is to be considered as history for the purpose of helping you know what the defendants knew or

should have known when they saw such communications as they did see and received such telegrams as they did receive.

You are entitled to view all of the evidence and to draw all of the reasonable inferences which you as men and women would, in your common sense, draw if you were making an honest investigation to determine what actually happened in this case.

It is for you to determine, in the light of the use of fast messages of communication, of cable, long distance telephone, airplane, whether or not—with ships carrying mail as infrequently as has been testified [182] in this case they did, in 1940 from Japan—as to whether or not it is reasonably likely that with the amounts involved and the business being transacted there, the slow method and infrequent method of ships was used or whether the fastest method for carrying mails as shown by the evidence was utilized.

In testing the evidence of the case, you have a right and should consider all of the statements and all of the exhibits 19, and 21 and 29, relative to these tanks. You have a right to determine whether the defendant Takahashi or the defendant Osawa was honest in stating the specific purpose of the article and the address of the ultimate consumer in a foreign country.

In the light of all of the evidence, do you believe that in exhibit 21, the application of July 16, 1941, that Mr. Takahashi believed that the specific purpose and the address of the ultimate consumer

for storage purposes was Hue Hsin Company, Shanghai, China?

With respect to exhibit 19, the application of April 16, 1941, it is for you to determine whether or not it was honestly believed by Mr. Takahashi the purpose of the articles and the name of the ultimate consumer for storage purposes by Miconi Shoko Company. In that connection you may consider that in exhibit 20 signed by Mr. Leo Nye Sing it was stated that the consignee was Koman Company, Mukden, China. And that the purpose was to be used on horse-drawn cooley wagons and carts, \$25,000, 50,000 pieces of automobile roller bearings. The Kono and Company was the "ultimate consumer to be sold to the trade as above explained." In [183] the light of that statement that those articles were to be sold to the trade as above explained, it is for you to determine whether or not the defendant Takahashi was frank and open with the government in not stating, instead of the purpose of the ultimate consumer being storage purposes by Miconi Shiko Company,—for sale by Miconi Shoko Company to the Japanese Army or Navy.

As I have advised you, any statements that I call to your attention are to be tested by you under the understanding that you are the final and supreme judges of the facts. You are obligated to follow my instructions as to the law. You are to draw those reasonable inferences as you honestly feel are the reasonable inferences to be drawn from the evidence and from each of the exhibits.

You are instructed that it is not necessary for the government to prove that all of the business carried on by the defendants was contrary to the United States law or that any other business than the particular business of the three tanks was contrary to the law.

There has been evidence introduced in this case as to the good reputation,—that is, what people say as to the honesty or integrity of the defendants,—and you shall give such testimony that weight as you believe it entitled to receive in determining whether or not the defendants are guilty as charged. But the jury will recognize that many men have *born* good reputations, sometimes over many years, and have later been convicted of an offense which has existed for the same many years during which everyone thought they had a good reputation. [184] And in this case, if you are convinced beyond a reasonable doubt that the defendants or either of them, by the evidence, are guilty of the three counts or any of them, it is your duty and obligation to find said defendants or such one guilty, regardless of how good their reputation may have been.

While the indictment is to be taken by you, that is for the purpose of letting you better understand the evidence and the instructions. And you are to follow the law as given to you by the Court, touching the indictment. The indictment is not evidence; it is just the method of placing the defendants on trial.

You may now retire temporarily. There must be

no discussion or expression of opinion by any of you.

(Jury retires temporarily.)

Thereupon Mr. Griffin excepted to certain charges of the Court, among others the following:

The Court then advised the jury, in effect, that he was permitted to comment upon the evidence, and the Court did comment upon the evidence, but the comment of the Court, to which the defendant Osawa excepts, was not unbiased, was not fair, was not met by the Court with any favorable comment of any kind in behalf of the defendant Osawa, but the comment was unfair, biased, prejudicial, without any endeavor at all to equalize the force of the comment, but made directly and with emphasis for the purpose of advising the jury that the Court, irrespective of what the Court said in the general instruction, that they should take nothing from it, to advise the jury that the Court desired a verdict of guilty in this case. Considering the comment made by the Court upon the evidence, an exception is taken to each and every comment made by the Court in that [185] particular. I desire to point out that having so commented, the defendants were entitled to have an equal fair comment in so far as their rights were concerned, to suggest to the Court this: While the Court by its comment has sought a conviction, because the defendants are charged with desiring to transship three tanks, from Shanghai, China, to Japan, the jury were entitled to be told that they also should consider this—there

is no evidence in the case that Japan required these three tanks in Japan. The evidence is that at the time in question Japan controlled not only the port of Shanghai but all the ports of China. The evidence is with that situation existing, the United States government denied the application, that the jury has an absolute right to infer, even if the shipments were direct to the Japanese Army, that those storage tanks might be and would be as useful in Shanghai, China, where its armies were employed, as it would be to ship them to Japan and transport oil from Japan, 1500 miles to Shanghai.

Also, the Court went further and, by his instructions, wiped out all of the law of good reputation and honor, so far as the defendants are concerned, by his instruction that the jury could consider the reputation for what it is worth, but—as the jury knows, said the Court—people with good reputations are guilty and in this case so and so and so and so.

The Court: It is understood and the Court rules that each exception taken by Mr. Griffin on behalf of Mr. Osawa shall be deemed taken by Mr. Bassett in behalf of Mr. Takahashi.

Mr. Bassett: Thank you. In addition to what counsel has said in taking an exception to the Court's commenting on the evidence, I wish to add that the comments were not only biased and prejudicial and unfair, and one-sided, but they were argumentative as well. [186]

The Court: I imagine that you would like all of the exceptions which Mr. Bassett has taken?

Mr. Griffin: Yes. I was just going to suggest that would round it out, then.

The Court: You may.

The Court: I am going to give some additional instructions, in the light of the exceptions you have taken, and if you wish, it may be understood you will have the right of exception to each one without the necessity of expressly taking them. Is that satisfactory?

Mr. Griffin: Yes.

Mr. Crandell: Yes.

Mr. Bassett: Yes.

(Whereupon the jury returned to the courtroom and was seated in the jury box.)

The Court: Members of the jury, supplementing the instructions on the law, that you must accept as the law, I wish to say this to you: In addition to what I have said with respect to the testimony in the case regarding the reputation of the defendants or either of them, the jury are instructed that if, in the light of all of the testimony and in the light of the reputation testimony, they believe the defendants or either of them are not guilty, they have a right to base that verdict upon their interpretation of the testimony, together with reputation testimony, if in the jury's opinion such satisfies them that the defendants are not guilty.

The jury are further instructed that they cannot find a defendant in any criminal action guilty upon mere suspicion, conjecture or surmise. The jury, however, is instructed that a reasonable inference from circumstantial evidence or a reason- [187] able

inference from direct evidence or a reasonable inference from circumstantial and direct evidence is not and are not mere suspicion, conjecture or surmise or mere suspicions, conjectures or surmises.

The jury does have a right to bring in a verdict of guilty if convinced by the evidence, including the reasonable inferences which the jury draws from some evidence of the guilt of the defendants beyond all reasonable doubt.

Would you read that to me, Mr. Reporter.

(Whereupon the passage referred to was read by the reporter.)

The Court: But if not convinced by the evidence and the reasonable inferences of the evidence beyond all reasonable doubt of the guilt of the defendants, the jury cannot convict the defendants or either of them upon suspicion, conjecture or surmise or prejudice.

With respect to certain comment I made on certain evidence, I wish to remind you again that you are not bound or controlled by any comment at all I make on the facts. You have the right absolutely and entirely to disregard whatever I say. But with respect to Exhibit 20 the Court wishes the jury to understand that there is no inference to be drawn against the defendants or either of them upon the ground that bearings were improper to be sent to Mukden. It was the Court's intention to have the jury consider whether or not, in the light of Exhibit 20, having recited that the consignee had such bearings for ultimate sale to the trade, if the defendants should not have advised the Government

in applications relative to the three tanks that Miconi Shoko Company was to sell said tanks or furnish them to the army or navy as the evidence may convince you was the actual fact. [188]

The jury has heard the evidence on the argument and instructions of the Court. When the jury retires, to consider their verdict, it will be the responsibility of the jury, under their oath and their conscience.

The bailiffs may be sworn.

(Whereupon the bailiffs were sworn.)

The Court: When the jury unanimously agrees upon each of the three verdicts as to each of the three defendants and the entries have been made, as I have already directed, the foreman will sign and date the verdict.

Ladies and gentlemen, the decision is now for you. You may retire.

(Whereupon the jury left the jury box and the courtroom.)

The Court: Do you wish to note any exceptions—though I have in mind what has been said—do you wish to except to each and every thing that I have said to the jury at this time?

Mr. Griffin: I so understood.

Mr. Bassett: Yes.

Mr. Crandell: Yes.

(The jury retires to consider of its verdict.) [189]

CERTIFICATE

State of Washington,
County of King—ss.

I, Lloyd L. Black, Judge of the District Court of the United States for the Western District of Washington, Northern Division, and Judge before whom the foregoing cause, entitled "United States of America, Plaintiff, v. Charles T. Takahashi, Edward Y. Osawa, et al, Defendants", was heard and tried, do hereby certify that the matters and proceedings embodied in the foregoing Bill of Exceptions are matters and proceedings occurring in the said cause, and that the same are hereby made a part of the record herein; and I further certify that the said Bill of Exceptions together with all the exhibits and other written evidence on file with the amendments ordered in the said cause and attached to said Bill of Exceptions contains all the material facts, matters, things, proceedings, rulings and exceptions thereto, occurring in said cause and not heretofore a part of the record herein, including all the evidence adduced at the trial of said cause; and I further certify that the exhibits set forth or referred to, or both, in the foregoing Bill of Exceptions constitute all of the exhibits offered in evidence at the said trial, and I hereby make all of said exhibits a part of the foregoing Bill of Exceptions; and I hereby settle and allow the foregoing Bill of Exceptions as a full, true and correct Bill of Exceptions in this cause and order the same filed as part of the record herein, and further order the Clerk of this Court to attach to the said Bill

of Exceptions all of the said exhibits and to transmit said entire Bill of Exceptions, including all exhibits whatsoever to the Circuit Court of Appeals for the Ninth Circuit. I further certify that the minute entry of the Clerk, transmitted with the record, contains all orders made by me fixing and extending the time for the presentation, settling [190] and filing of the Bill of Exceptions, and that the foregoing Bill of Exceptions is presented, settled and allowed within the time prescribed for that purpose.

Dated this 7th day of Sept., 1943.

LLOYD L. BLACK,

United States District Judge for the Western District of Washington, Northern Division.

The foregoing certificate is true, and is approved.

TRACY GRIFFIN,

SAMUEL B. BASSETT,

Attorneys for Appellants.

Received copy of the within Bill of Exceptions this day of August, 1943.

U. S. Attorney.

Attorney for Appellee.

Attorneys for Appellants.

[Title of District Court and Cause.]

PROPOSED AMENDMENTS TO BILL OF
EXCEPTIONS

Comes now the plaintiff in the above entitled cause and moves that the following amendments be added to the Bill of Exceptions:

I.

That to the cross examination of Osawa the following be added:

Referring to Exhibit No. 17, the first time I saw that letter was just prior to the previous trial. I never saw it in Japan.

Q. Did you ever talk with Mikuni-Shoki Company at all in regard to that letter while you were in Japan, or the details connected therewith?

A. Not in particular to this letter.

Q. But the facts mentioned in the letter, you did talk of them didn't you?

A. The only thing in this letter that I talked over with them was that they have arranged these two companies listed here.

Q. Well, you talked to them about "three new tanks, 80's, and accessories which we ordered from you last year", you talked that over with them, didn't you?

A. The only information I gave on that was that I told them why not offer these tanks which we have as a starter for our connection with Shoki.

Q. The military authorities were hounding you every day, were they not, to get these three tanks?

A. They were not hounding me, but they were hounding Mikuni.

Q. Were you there?

A. I was not with Mikuni when they were hounding him.

Q. Well, they were hounding you weren't they every day?

A. No, the military authorities were asking Mikuni about these tanks, when they were coming, why can't they get them through, etc., and Mikuni, in turn, would relate that information to me.

I wrote that we were on the spot on these tanks, and it is a fact that we were. The military authorities were asking Mikuni all of the time, and they were relaying that information to us.

Q. The Tonway Trading Company and the Hua Hsin Company are the same companies mentioned in my letter to Takahashi.

I never saw plaintiff's Exhibit No. 18 prior to the last trial. I talked with them about the tanks. They asked me if I could get them an R.C.A. Receiver. I told them to get in touch with the Seattle office. They told me afterwards that they sent a cable and that a cable came back from Takahashi. I presume the dates were July 2nd, July 10th and July 15th, or thereabouts. (R. 436-439).

II.

That all of the Exhibits in the case or copies thereof be attached to the Bill of Exceptions prior to the Bill being certified.

III.

That there be added to the Bill of Exceptions the following:

That when the motion was first argued, counsel for defendants, Takahashi and Osawa, urged to the Court that Mr. Takahashi had a right to be in the enclosure because he had gone upon the vessel with a permit and had left the vessel with certain custom officials, which constituted an implied consent.

Later, and before final decision, the Court in the presence of the defendants indicated in his ruling that when Mr. Takahashi left this vessel from Japan on which Mr. Osawa had come, going in the Customs enclosure where the public had no right to be, that he put himself in the position of a passenger, and was subject to the same search as the authorities had a right to make of Osawa: the point the Court was stressing being namely, if the authorities could search Mr. Osawa, and could not search Takahashi, then that anyone who wanted to bring something they had no right to have from Japan, could have an accommodating friend go on the boat and give them the things they wished kept secret, and thereby effect the stalemate of the officers.

The next day, despite the fact that Mr. Takahashi had sat there complacently while counsel made the argument of his having been on the boat, the Court was presented with another affidavit in reference to the first one, solemnly swearing Mr. Takahashi never had been on the boat at all, and had never left it.

The Court was, repeatedly, informed by counsel, even as late as the motion for a new trial, that Mr. Takahashi had a written permit to go into the enclosure. The only permit was Exhibit No. I, presented to the Court on May 4th at this preliminary hearing, bearing Mr. Takahashi's picture, bearing his signature and reading as follows:

“United States Customs Service, Office of the Collector, Port of Seattle, July 1, 1940.

Admit within the Customs Lines of incoming vessels at the Port of Puget Sound, Mr. C. T. Takahashi, 212 5th Ave. S., Seattle. Boarding any vessels, after customs boarding, but not entering customs enclosure”.

Signed by Roy L. Ballinger, Assistant Collector” and bearing the notation “Extended to Dec. 31, 1941.”

Since Mr. Takahashi only had a permit to go on the vessel, and since his first affidavit was that he went on the vessel and then went in the enclosure, the Court finds that Mr. Takahashi boarded the vessel and left the vessel for the enclosure where he had no written permit to be.

J. CHARLES DENNIS,

U. S. Attorney.

Received a copy of the within Proposed Amds. to B. of E. this 28th day of Aug., 1943.

VANDERVEER, BASSETT &
GEISNESS,

Attorneys for Defendants.

Received a copy of the within Proposed Amendment, this 28th day of Aug., 1943.

TRACEY E. GRIFFIN,

By [Illegible]

Attorney for Defendants.

[Endorsed]: Filed Sept. 3, 1943.

[Title of District Court and Cause.]

ORDER

This matter coming on for hearing this day on the plaintiff's motion for allowance of proposed amendments to the bill of exceptions, and the Court having heard and considered the arguments of counsel, it is therefore

Ordered and Adjudged that said proposed amendments to the bill of exceptions be and the same are hereby allowed and are hereby incorporated as a part of the bill of exceptions.

Done in open court this 7th day of September, 1943.

LLOYD L. BLACK,

United States District Judge.

Approved:

TRACEY GRIFFIN,

SAMUEL B. BASSETT,

Attorneys for defendants.

Presented by:

J. CHARLES DENNIS,

United States Attorney.

[Endorsed]: Filed Sept. 7, 1943.

PLAINTIFF'S EXHIBIT No. 9

[Foreign Characters]

[Pencil Notations] E-Y. O. B. C. 11/2/41. A. D.
R.

Hua Hsin Company

Telephone: 15914

320 Szechuen Road

Shanghai, July 4th, 1941.

Messrs. China Import & Export Company

212 5th Ave. So.

Seattle, Washington,

U. S. A.

Gentlemen:

As a consequence of our long business discussion with your representative, Mr. W. L. Chang, we wish to open our most cordial business relation with your goodselves by our placing an order with you for three new storage tanks, which we have heard that you have in your hands as available stock, and we beg to confirm our today's telegraphic order as follows, which we trust, would have been receiving your most careful attention at your end.

Article: New storage Tanks, capacity 80,000 Bbls.

ea. Specifications and Blue-Prints as handed by Mr. Chang.

Quantity: 3 (three) complete sets with complete accessories and construction materials, such as welding rods and flux.

Price: CIF Shanghai U. S. \$29,500.—per complete set.

Amount: U. S. \$88,500.—

Payment: Deduct U. S. \$71,700 from our credit account. Balance shall be remitted shortly. All particulars as per Mr. Chang's letter.

Packing: Usual Export Custom.

Shipment: From Pacific Coast July/August 1941.

Destination: Shanghai, China.

For your information, we might as well add here that these tanks are to be imported for the local storage purpose and will not be re-exported to any country with whom you are not on friendly terms.

Thanking you in anticipation for your kind attention to the above, we beg to remain, Gentlemen,

Yours faithfully,

HUA HSIN COMPANY.

M. H. KIANG,

Manager.

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 10-6-42.

PLAINTIFF'S EXHIBIT No. 10

Confirmation of Telegram

Mikuni-Shoko Co. Ltd.

Tokyo, Japan.

Cable Address: "XYMAS" Tokyo

Codes Used:

Bentley's 2nd Phrase,

Acme and Private

To NEWYR C. T. Takahashi & Co. Seattle,
Wash. U. S. A.

Date Sent June 27, 1941.

Code Used Duo & Private.

[Notation in ink: C T T 11/2/41 ADR (Illegible)]

Code	Translation
D I C E V	Duo Code
A W S U E	as arranged
S Z L I K	Refer to your letter of April 5th
X B U V L	are endeavoring to learn name of
A G D U D	composition of
P G T I M	12
O G U S W	Tubes
B S O Y G	even
A Z H U A	approximately
Y F B I V	such as
B U M A M	Nickel
B U Y C D	Chrome
P V S U N	or
N K A T W	Tungsten
N D R O U	Steel
G G I X V	at what temperature
H C U M U	can stand
E O R V V	Please telegraph promptly
I O A C O	what are owners ideas
U I D D V	stop
D I H O T	Do utmost to arrange earliest possible ship- ment
I F A I L	by every possible means

Code	Translation
O O B P V	Oil Tanks
F G Y R A	and
O G U S W	Tubes
J W A L E	our customers desires
P R Y E N	additional offers
O O B P V	Oil Tanks
Z V B O P	telegraph prospect

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 11

Confirmation of Telegram

Mikuni-Shoko Co. Ltd.

Tokyo, Japan.

Cable Address: "XYMAS" Tokyo

Codes Used:

Bentley's 2nd Phrase,

Acme and Private

To NEWYR Seattle (Wash. U. S. A.)

Date Sent June 28, 1941.

Code Used Duo.

[Notation in ink: C T T 11/2/41 ADR (Illegible)]

Code	Translation
R K K O E	Decided
B H V E W	Today
H K U S H	Name of firm (is)
A U H	hua
N I S H	hsin
C J Z O D	Company (See Names)
N Z Y G A	Address (es)
J B A O M	320

Code	Translation
N E U H C E Z S	szechuen
A U S J S	Road (s)
Y U P G T	Shanghai (China)
L D X U V	Con firm by telegraph
M F C O L	In order to prevent any misunderstanding
S T O P	stop
C G Z Y J	Without knowing
A G D U D	composition (of)
O G U S W	Tube (s)
K O X Y L	Negotiations distiontinued for the present
F B E H F	What shall we do, must have immediate reply

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 12

Confirmation of Telegram

Mikuni-Shoko Co. Ltd.

Tokyo, Japan.

Cable Address: "XYMAS" Tokyo

Codes Used:

Bentley's 2nd Phrase,

Acme and Private

To NEWYR Seattle.

Date Sent July 5, 1941.

Code Used Duo Code Inverted.

[Notation in ink: C T T 11/2/41 ADR (Illegible)]

Code	Translation
P L A O R	With reference to
A O P R W	Trucks(s)
R H Y M L	Mining machinery
T E I H R	you may receive

Code	Translation
R G V U V	telegram(s) from
Y A W N O T	Ton way
M S Y P D	Trading company
C B E L M	129
Y N X J I	Hamil-ton
Y D V S I	House(s)
I E C M M	170
E S G N A I K	Kiangse
A U S J S	Road(s)
Y U P G T	Shanghai (China)
S P A F J	instead of
G N A H C	Chang
S T O P	stop
G N A H C	Chang
E I L L X I W	Willie
X G Y S J	is
O N H O K	Kohno
T K G A S	Representative of your
O C E I C	China Import & Export Co.

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 13

Confirmation of Telegram

Mikuni-Shoko Co. Ltd.

Tokyo, Japan.

Cable address "XYM AS" Tokyo

Codes Used:

Bentley's 2nd Phrase
and Private

To NEWYR Seattle.

Date Sent July 8th, 1941.

Code Used Duo.

[Notation in ink: C T T 11/2/41 ADR (Illegible)]

Code	Translation
U F I H R	You will receive
R G V U V	telegram from
O C A U H	HUA HSIN & CO.
O G U S W	tube
B G Y U H	for
U M Y J K	licence
E Y W N S	please rush
L I U R A	analysis

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 14

C. T. T. 11/2/41 ADR.

July 5, 1941

Dear Ted:

I cannot forgive myself for forgetting that yesterday was fourth of July and I worked. Should have declared a holiday and taken the day off like all patriotic Americans do. Its hotter than hell right now, Nubai just being over.

Getting down to serious business, I just received your letter No. 20. Was quite interested in the activity in Mexico and you can rest assured that I will do all possible to put it over over here. Have already dicussed the situation with Ikuta and upon receipt that you can ship the machinery out, will go into real action. Have explained to him regarding payment and I think they understand. Too bad that

everytime we use Shenker, it proves expensive. I guess its in the system and can't be gotten rid of. Anyway I hope to put something over so that we can get it back.

The trouble with rails, mercury and tin plate is that the gunbu has no direct interest in it and the association is handling all imports of these articles. Sometime in a pinch they go to the gunbu and ask for their help in order to get space. That is one reason the gunbu told us we better handle other things that is not formed into association. It is possible they gave us a lower price just to get rid of us so they can favor Mitui mitsubishi etc. who are already handling for the asociation and they are afraid that if we step in now, we will only raise the price. The space will be very difficult to get as we cannot use the gunbu for things that they are not directly connected with. The only other way to get around this is to go see Ikeda in Osaka and if I can get away for a couple of days, I may do this as I want to settle accounts with him anyway. The last time he was here, I asked him about the axles and wheels, and he said that the wheels are still stuck in the custom warehouse as they will not give him permit and he thinks he got that straightened out but they have a price set on all these stuff so he is afraid they will be able to sell unless at loss. Have checked upon the price set question and found that this is true. However, I did not get what that top price is so will soon find out thru other channels.

Marmon: Have already instructed Kohno to wire order for 150 sets of Marmon so you can get permit. Next time you wire them you better tell them that it is only to get permit as they thought that you wanted a definite form until I explained to them why you wanted it. I hope I am right. I told them to work on 150 sets and in the meantime you will try to get a permit and when you do get it we can ship it as soon as the factory can get them out provided they get the order. If no order then no business of course.

Shanghai office: The reason I was unable to send you the name of the Shanghai office is that it was not until shortly that Ikuta came to terms with the people over there. Seems they wanted too much commission. In order to make it easier for you in making application you can now say your representative is Willie Chang who is Schnicklefritz. The firm of Chang, you better not use. Hereafter you better use the two firms, namely, Hua Hsin Co. 320 Szechuen Road, Shanghai. and Tonway Trading Co., Hamilton House 129, 170 Kiangse Rd. Shanghai. These two firms are the ones that Mikuni has made definite connection with in Shanghai.

Wood Oil: This is going to be a tremendous business. Schnicklefritz was a little quick on the trigger and talked of five thousand tons thinking he could easily get this much. However, this is an enormous quantity and almost impossible to get on short notice. Mr. Ikuta went to Shanghai, and checked and found out that the wood oil at present

is handled thru Showa Tsusho, Mitsubishi etc. so he negotiated to get this thru the back door. The arrangement is a difficult one to explain here but will do my best. Wood oil that came and is coming into Shanghai is held by gunbu. They have control of all the stock. The material may cost only 10c in the front but when it comes to Shanghai, its worth a dollar. The government is up against it because everything that comes into Shanghai like nickle is way high in price, so they raise the price of export of wood oil to cover for the difference in price in imports. In this way they try to maintain the balance of trade. Mr. Ikuta has made very good arrangements to get the wood oil so for the time being you better work on the small lots of two or three hundred tons at a time. Your information regarding Chungking handling of oil was very much appreciated by Ikuta and the gunbu so if you can furnish any other true information, they would appreciate it very much and would put us in very good favor.

Mangyo:

Thru Assistance of Mr. Ikuta and his attorney, we are sending a letter to Manson. The gist of the letter is that I have talked it over with Seattle and Seattle insist that the responsible for the breakage is Manson fault, based on the argument that they did not sent an inspector to check the shipment as per contract and if they had the inspector would have objected because of no packing and we would have taken care of it and there would have been no trouble. The contract definitely stated we will

pack. Secondly when I made them a proposition that we will accept three hundred fifty thousand yen and give them the copper wire, I was too easy but since I made the proposition, we will abide by it provided they accept immediately. However if they still refuse to accept, I cannot stay here any longer so will leave it in the hands of the attorneys and all propositions that I made is hereby cancelled and we will claim for the full payment less nothing. Our weak point is that the contract calls for packing. Also one point is that it also stated that all repair for account of us. This they understand that before loading but the way the contract reads, it is possible that it could be interpreted as at arrival. Third, when Togo made the switch from the big payment to the small payment, he made an agreement in writing that we will wait until the inspection is over before we will take the second payment. On the other hand our strong point is that Mangy cannot stand a suit. Also their not sending a representative to check the loading. Have this letter already written up and we having the lawyer check it over once more. This lawyer will be no chiseler as he is Ikuta's good friend and his lawyer.

[Endorsed]: Filed May 15, 1942.

[Pencil Notation] 9-30-42.

PLAINTIFF'S EXHIBIT No. 15

C.T.T. 11/2/41 ADR.

July 12, 1941.

Dear Ted:

Shanghai: Its been a long time since Kohno and finally Ikuta went to Shanghai and was finally able to make arrangements. They have a very good set up and have a sort of an office there. In order to make work progress better it is better that we have our own name registered there to under Cieco so Ikuta is including our name in the office to and Kohno will be our representative there. He is known as Willie Chang, representative of Cieco. This is the only way that we will be able to work a lot of things over there that other firms can't. For instance, wood oil, is under control of the gunbu and in connection with a sort of Okurasho, they are letting Showa Tsusho and Mitsubishi handle the export of it but we are going to take it away altogether provided you can handle it on your side. All orders that Kohno cable you from Shanghai is for you to apply for license only and it is not firm. However, if you get the license, Business will no doubt be consumated. Ikuta will push it thru some-way. No business closed thru Shanghai is definitely closed unless confirmed by Mikuni here.

Vladivostok and Netherland East Indies is absolutely out. Even if you get permit and ship there, it is no good because you cannot tranship from there. The government will seize it for their own use and as the gunbu has no control there, they cannot do anything.

Kohno requests you to send him by first possible steamer, one Zenith portable radio. The kind he says when you open the lid music or something comes out. Understand this is for some member of the gunbu in Shanghai.

Quicksilver: We have been working hard in order to put this thru. First we tried here and it seemed impossible as the price but since Ikuta came back we have been working and pushing gunbu on this. Then we tried Shanghai but they said it was better we work it here so once again we pushed gunbu. The price they say is still high and we are wondering if it isn't because of the price of the container. It is usual that they buy mercury on basis that they return the flask. This would make a difference of around ten to fifteen yen. We do not know whether we will have to go thru the association or not yet. At present we are trying to get it thru directly thru gunbu. I hope you guys got this definitely in spite of your offer being on basis of with firm offer in hand because you cannot approach gunbu with this kind of term. If they decide to buy, you better have it or else our rep will be ruined.

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 16

C. T. T. 11/2/41 A D R.

July 15, 1941

Dear Ted:

Since writing previous letters on Quicksilver, I am sending the letters just the same, so that you can see the trend of action we have been making. The gunbu told us to go to the association which we did but the association talked of such cheap price that we gave up for a time. When you came back again with firm offer in hand, we once again approached gunbu and they started to go into action and told us to go once more to the association. Then the Association said that they have a contract with Mexico thru the embassy, for \$210.00 per flask C&F. This price includes the price of the flask. We approached the gunbu again when I talked with you on the phone and when you sounded doubtful of getting the quick, I immediately started to take steps to backwater. Gunbu said to wait awhile as they will check with the association, themselves. On the other hand Shoko sho said that even if our price was a little higher, it should be brought in, as they know that in spite of the contract existing until december for a thousand flask a month at 210.00 they are not coming in. Sometime some of it is coming but the contract is not being fulfilled. As a backwater I said that we are able to get it now but if they wait, as the gunbu suggest, we may not be able to get it even if we pay more than 220.00. I told them that if they come back later and say they want it, we will have to go thru the entire process of obtain-

ing it and negotiatew on price all over again. This is my only out. Hereafter on anything with gunbu, it is very bad policy to quote on basis of with firm offer in hand. They have to move so many machineries and force the buyers and the shokosho to issue permit that they must have everything concrete. They cannot tell the users to buy and then have us tell them that the price is higher nor the stuff is unavailable. When you talk to gunbu its quite different from when you talk to ordinary business houses. If they decide to push anything for us, they want it to be just so. Of course, they will overlook if we cannot ship because of definite embargo like our tanks but even on tanks they are hounding us every day. We sure are on a spot on the three tanks. I doubt if a day goies by that they don't call us or say something about them. If we could only get those three tanks out, it would be a life saver and they would do almost anything for us. Before you get this letter we may get more action on the quicksilver. Be sure that Mexico can supply before we make a firm offer. Mexicans think nothing of cancelling contracts or of fall downs so we must be doubly careful to make sure that whoever we are dealing with down there are responsible and really have the stuff.

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 17

Cable Address: "XYMAS" Tokyo

Codes: Bentley's 2nd Phrase and Private

Phone: Shitaya (83) 5260. 5423. 9129

C. T. T. 11/2/41 ADR.

Mikuni Shoko Company Limited

(Mikuni Commerce & Industry Co. Ltd.)

No. 4, Gokencho, Kanda.

Tokyo, Japan.

Import Dept.

Our letter No. 29.

July 16, 1941.

Messrs. C. T. Takahashi & Co.,

212 5th Ave., So.,,

Seattle, Wash.,

U. S. A.

Re: Shanghai:

Gentlemen:

As informed you previously by phone and telegrams, our Mr. Kohno has been working very hard everyday in Shanghai under the present difficult conditions as stated in our last respects No. 28 and as known well by your Mr. Osawa, and at last we have decided as follows:

- 1) HUA HSIN COMPANY, 320 Szechuen Road
Shanghai, Cable Add. HUACO. Phone:
15914.

This firm has been recommended by the Military people there, being their financial standing considered as very good, and after having made various

discussions and talkings about this firm at Shanghai, this company has been considered as most suitable for our purpose, which they agreed to co-operate with you and us. Good arrangement and better understanding have been secured. You therefore, intending to export to them the following goods, can now apply for the export license which we hope, you will surely succeed in securing from your government.

3. New Tanks 80s and its necessary accessories, which we ordered from you last year.
12. Reaction Vessels (Tubes) as per Blue Print and specification No. 1003 sent to us formerly.

With reference to the advance money paid by us to you already, it would become necessary to prepare some evidence that all the payment against the 3 new tanks have been made to you by HUA HSIN CO. in place of our firm, which please take note. We trust, by thus, we can present our business from being detected by any body else and can get the delivery of 3 tanks safely.

- 2) **TONWAY TRADING COMPANY: Hamilton House 129, 170 Kiangse Road Shanghai, Cable Add. TONWAY.**

This company is also creditable firm and recommended by Mil. people there and they came to accept their position to co-operate with us in the matter and we have decided to use their name in addition to the said HUA HSIN COMPANY. This is because that if you should have to receive so

much big orders at a time (in short period) from only one firm and you should have to apply for the license so many times under the same name and thus is likely to cause something doubt at your end when severe inspection has been put over on your applications. We trust, to have two firms in Shanghai, would be very effective in every respect to get our final success.

From this view aforesaid, the following goods has been ordered from you in the name of Tonway Trading Co. to let you apply the export license.

- 1 set of Mining Machinery (Indian Mine)
- 150 Marmon Herrington Trucks.
- 6 Locomotives (Pacific Coast)

We also trust you would have done every necessary steps to get the export license at your end.

3) W. L. CHANG: This is the Chinese name of Mr. Kohno, as the representative of your China Import & Export Co. so that he may be able to make proper arrangement or evidence in the matter. Hua Hsin Co. and Tomway Trading Co. can easily fix any contract with Mr. Chang in place of you, even as nominally and thus can be able to protect our plan being detected by any body else.

GENERAL: As a large number of important articles to be intended for Japan have been put on embargo, it has become now most important for you and us to obtain the export license from your Governmental Authorities and if you succeed in securing same, it will be safe for us to state that we

can fix the business at our side. We strongly ask you to obtain export license for any prospective articles.

Please bear in mind that all orders, except 3 Tanks placed with you through Shanghai firms, were only to have you apply for export license and should be subject to our final confirmation by wire or phone by ourselves in TOKIO.

4) Mining Machinery: This item must be talked in North China instead of Shanghai and we wished to let him rush to North soonest as possible, but as we had very many things to do in Shanghai for our GUNBU, we were obliged to stay him there for long time beyond our expectation. However, we will soon instruct him to go up to North in a few days to fix the Mining Machinery business there.

Hoping to hear from you a good news at the soonest possible ti time and also hoping anything trouble will not be occurred in our tactics, We are,

Yours faithfully,

FOR MIKUNI-SHOKO CO. LTD.

M. IKUTA

Director

MI/TH:

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 18

Cable Address: "XYMAS" Tokyo

Codes: Bentley's 2nd Phrase and Private

Phone: Shitaya (83) 5260. 5423. 9129

C.T.T. 11/2/41 A.D.R.

Mikuni Shoko Company Limited

(Mikuni Commerce & Industry Co. Ltd.)

No. 4 Gokencho, Kanda,

Tokyo, Japan.

IMPORT DEPT:

Our letter No. 30.

July 16, 1941.

Messrs. C. T. Takahashi & Co.

Seattle, Wash.

U. S. A.

Dear Sirs,

Reaction Vessel: We are looking forward for your information about this item as stated in our last respects. Please refer to No. 28. Up to this writing, the vessel offered by you could not be able to meet with our customers' requirement but under the conditions at the present, we think, if you could obtain export license, we could also obtain the order from them.

3 New Tanks: Should we fail in securing other various goods due to the reasons beyond our control, yet we are hopping to secure this item, first of all, because we shall have nothing to reward for our GUNBU's patronage. The Gunbu people are enthusiastically desiring to get the delivery of this

item and are encouraging us at all times. They are trusting us for our abilities as well as your own.

Mercury: The import of this item has been controlled by the Ministry of Com. & Industry and the associations of Japanese Mercury factory. Our effort to push the sale of Mexican mercury has made the Auth. and Association to approach us and we are going to wire you to get new offer from you, but this very day, Mr. Osawa has kindly informed us that he received a telegram from you to the effect that Mexican mercury has been put on embargo and nothing to do now. Anyhow, as we have got some good connection with the Military Auth. as well as Min. of Com. & Ind., please let us have every news if conditions turn better.

R. C. A. Receiver: This item was required by the Japanese Mil. Authorities in Shanghai and we telegraphed you to ask for your firm offer for this item. We thank you very much for your kind attention paid for this matter. This receiver would be used to steal out the special waves and the GUN-BU people told that RCA No. 234 model would be suitable better than No. 117 model.

The frequency is at maximum 300,000 and at first 550 kilo cycles or below. Output of power required, is 3 watt or over. This information has been transferred to you and received from you a telegram of 11th inst. requesting us to know weight, size and operating current also frequency in kilo cycles, number of band and asked us if we desire transmitter.

We therefore transferred the message to Mr. Kohno who replied that "RCA size 24"x12x12 20 kilo 60 cycles band same as frequency (300,000) applicable to 110 volt AC current, 220 volt AC Current, 110 DC current and 220 volt DC current. We think the above specification will be clear to you and you can arrange with the makers for production at your side, but to make the matter easier for you, we will consult with the electric engineer and let you know by telegram in a few days.

Nickel Copper Iron Ingot: We thank you for your so kind attention given to the matter, but carefully considering this item with Mr. Osawa, we have decided to give it up.

Record Loutit Process: Sample Oil has been presented to the Nenryosho (Mil. Fuel Dept.), where the Liet, Masuda's Report has been transferred, and the sample oil has been under inspection there now. We shall not lose any time to watch the result. We think in near future their inspection will be over, when we rush again in this matter.

Assuring you of our always attention to our busi-

ness with you and thanking you in advance for your
co-operation with us, we are,

Yours faithfully,

FOR MIKUNI-SHOKO CO.
LTD.

M. IKUTA,
Director

MI/TH:

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 19

Department of State

[Stamped] Division of Controls, Apr. 18, 1941.

Department of State.

United States of America

Application for License to Export Articles and Ma-
terials (Other Than Arms, Ammunition and
Implements of War and Tin-Plate Scrap) Des-
ignated by the President as Necessary to the
National Defense Pursuant to Section 6 of the
Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

Original

Japan (Pencil Notation: China)

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.
- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.
- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under

appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

(1) Date of application April 16, 1941.

(2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

[Pencil Notation] China Imp.

(3) Name of applicant C. T. Takahashi & Company
By IRA L. EWERS.

(To be signed in ink)

(4) Consignee in foreign country

Name.

Mikuni Shoko Company

[In pencil]: Chinese Co.

Nationality Japanese

[In pencil]: Chinese.

Address

Street No. 4, Gokencho, Kanda

City Tokyo, Japan

State or province.....

Country Japan.

(5) Purchaser in foreign country
Name Mikuni Shoko Company
Nationality Japanese

Address

Street No. 4, Gokencho, Kanda

City Tokyo, Japan

State or province.....

Country Japan

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.

3

(each tank weighs about 270 long tons)

(7) Description of articles or materials to be exported

(8) Approximate net value

Complete New Steel Dis-mantled Storage Tanks and accessories for re-erection purposes.

\$22,500.00 f.o.b. Seattle per tank

[Stamped] Division of Controls, Apr. 16, 1941.
Department of State.

[Stamped] Application Rejected. The Administrator of Export Control has determined that the proposed exportation would be contrary to the interest of the National Defense. Rejection No. H T-4-R.

May 14, 1941.

(9) Source of material to be exported (see paragraph (e) above):

Graver Tank Company, East Chicago, Indiana/Galamba Supply Company, Kansas City, Kansas.

[Pencil Note]: Leave out Sanken Galamba. purchased through Sonken

(10) State the specific purpose for which the arti-

cles or materials are required and the name and address of the ultimate consumer in the foreign country:

[Pencil Note]: Leave out.

Storage purposes (by Mikuni Shoko Company.)

- (11) License to be sent to—(type or print plainly)

Name C. T. Takahashi & Company

[Pencil Note]: China Imp.

Street 212 Fifth Avenue South

City and State Seattle, Washington

- (12) Consignor in United States

[Pencil Note]: China Imp.

Name C. T. Takahashi & Co.

Nationality United States

Address:

Street 212 5th Ave. So.

City Seattle

State Washington

- (13) Seller in United States

Name C. T. Takahashi & Company

Nationality United States

Address:

Street 212 Fifth Ave. So.

City Seattle

State Washington

Nature of business Importers & exporters

- (14) Port of exit in the United States from which it is proposed to export the shipment.....

License is hereby granted to the applicant mentioned herein to export from the United States of America to Japan the articles or materials described

and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For official use only).

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

[Endorsed]: Filed May 15, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 20

Department of State

[Stamped] Received Department of State 1941
May 8 AM 10:01. Division of Communications and
Records.

[Stamped] Division of Controls May 9 9:51 AM
'41. Department of State.

United States of America

Application for License to Export Articles and Ma-
terials (Other Than Arms, Ammunition and
Implements of War and Tin-Plate Scrap) Des-
ignated by the President as Necessary to the
National Defense Pursuant to Section 6 of the
Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

Original

China

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee,

and it may not include more than one commodity nor shipments to more than one country.

- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.
- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.
- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of

State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

(1) Date of application May 5, 1941.

(2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

Nationality Manchurian.

(3) Name of applicant China Import & Export Company

By LEO NYE SING.

(To be signed in ink)

(4) Consignee in foreign country

Name Koman Company

Nationality Manchurian

Address

2-Dan Kyowagai,

Street Yamato-ku

City Mukden

State or province.....

Country China

(5) Purchaser in foreign country

Name Koman Company

Nationality Manchurian.

Address

2-Dan Kyowagai,

Street Yamato-ku

City Mukden

State or province.....

Country China

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.

(7) Description of articles or materials to be exported

(8) Approximate net value

50,000 pieces

Automobile Roller Bearings

\$25,000.00

[Stamped] Application Rejected. The Administrator of Export Control has determined that this proposed exportation would be contrary to the interest of the National Defense. s Rejection No. DI-11-R. May 23, 1941.

(9) Source of material to be exported (see paragraph (e) above):

Various wreckers (automobile) & wholesale bearing dealers.

(Name)

(Address)

(10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:

To be used on horse-drawn coolie wagons and carts.

Koman Company, 2-Dan Kyowagai, Yamato-ku, Mukden, is the ultim to be sold to the trade as above explained.

- (11) License to be sent to—(type or print plainly)
Name China Import & Export Company
Street 212 Fifth Avenue South
City and State Seattle, Washington
- (12) Consignor in United States
Name China Import & Export Company
Nationality American
Address:
Street 212 Fifth Ave. So.
City Seattle
State Washington
- (13) Seller in United States
Name China Import & Export Company
Nationality American
Address:
Street 212 Fifth Ave. So.
City Seattle
State Washington
Nature of business Import & Export
business
- (14) Port of exit in the United States from which
it is proposed to export the shipment Pacific Coast
ports

License is hereby granted to the applicant mentioned herein to export from the United States of America to China the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within

1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For Official Use Only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

[Stamped] Illegible.

[Endorsed]: Filed May 19, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 21

Department of State

[Stamped] Division of Controls. Jul. 23 4:30 PM '41. Department of State.

[Stamped] Division of Controls. Jul. 22, 1941. Department of State.

United States of America

Application for License to Export Articles and Materials (Other Than Arms, Ammunition and Implements of War and Tin-Plate Scrap) Designated by the President as Necessary to the National Defense Pursuant to Section 6 of the Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

Original

China

(Insert here name of country of destination

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.
- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.

Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.

- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.
- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

- (1) Date of application July 16, 1941.

(2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

(3) Name of applicant China Import & Export Company

By LEO NYE SING.

(To be signed in ink)

(4) Consignee in foreign country

Name Hua Hsin Company

Nationality Chinese

Address

Street 320 Szechuen Road

City Shanghai

State or province.....

Country China

(5) Purchaser in foreign country

Name Hua Hsin Company

Nationality Chinese

Address

Street 320 Szechuen Road

City Shanghai

State or province.....

Country China

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.

(7) Description of articles or materials to be exported

(8) Approximate net value

3

(each tank weighs about 270 long tons)

Complete New Steel Dismantled Storage Tanks and accessories for erection purposes.

\$29,500.00 f.o.b. Seattle per tank

[Stamped] Application Rejected. The Administrator of Export Control has determined that this proposed exportation would be contrary to the interest of the National Defense. Rejection No. H T-26-R. Aug. 1, 1941.

- (9) Source of material to be exported (see paragraph (e) above):

Graver Tank Company, East Chicago, Indiana.

(Name) (Address)

- (10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:

Storage purposes.

Hua Hsin Company, 320 Szechuen Road, Shanghai, China.

- (11) License to be sent to—(type or print plainly)

Name China Import & Export Company

Street 212 Fifth Ave. So.

City and State Seattle, Wash.

- (12) Consignor in United States

Name China Import & Export Company

Nationality United States

Address:

Street 212 Fifth Ave. So.

City Seattle

State Washington

- (13) Seller in United States
 Name China Import & Export Company
 Nationality United States
 Address: Street
 212 Fifth Ave. So.
 City Seattle
 State Washington
 Nature of business Importers & exporters

(14) Port of exit in the United States from which it is proposed to export the shipment Seattle, Wash.

License is hereby granted to the applicant mentioned herein to export from the United States of America to Shanghai, China the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has

expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For Official Use Only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

[Endorsed]: Filed May 15, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 22

Name C. T. Takahashi & Co. NEWYR.

Address 212 5th Ave. So.

(Tel. No. If Delivery to Be Made by Telephone)

AFTER-HOUR INSTRUCTIONS—If Any

	Office Hours		Disposition To Be Made of Ur- gent Messages Received During Closed Hours
Week Day	M to	M	
Saturday	M to	M	
Sunday and Holiday	M to	M	

BW209

Remarks 8-7-41

B W167 8-7-42

..... Date.....19.....

Permanent Address and After-Hour Instructions

2747A

[Endorsed]: Filed May 19, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 23

10

Name China Import & Exp. Co. "Cieco"

Address 212 Fifth Ave. So.—Tel ~~El 5362.~~

El 5166

(Tel. No. If Delivery to Be Made by Telephone)

Permanent Address Record

of Names Not Contained in Directories

Remarks

W444	10-13-27	W10	19-13-32	W304
W443	10-13-28	W443	10-13-33	10-13-37
W104	10-13-28	P138	10-13-34	W277
W513	10-13-30	W306	10-13-35	10-13-38
W636	10-13-31	W296	10-13-36	W349
Nites: Takehashi		Pr 3344		10-13-39

Check all cards against new issues of Telephone and city directories, and destroy unnecessary cards. Get recd. on all msgs. dld.

[Endorsed]: Filed May 19, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 24

Indicate by (✓) Each Instruction to be Observed

✓ Received Messages	✓ Received Messages	✓ Originating Messages
Special Routing	Cash on Rec'd Col-	Charge Ac-
Get Receipt (Except E. M. D.)	lects	count
Do Not Drop (E. M. D. Only)	Do Not Telephone	Answer Phrase
Drop When Closed All Hours	Deliver by Telephone No Advertising	Authority
Drop During Busi- ness Hours	Matter	CR
Rate Received Col- lects	Ofc Fone EL 5166	TA Spx 2/8/27M6-22-38

After-Hour Instructions, Etc.

X ÷ China Importing Co. by msgr.		Call Box No.
Dont fone aft 10p—DWR before 7a. O'nite		Sunday Hours
Osawa Rai 5166		Saturday Hours
Takahashi Ald 1708		8-1
Call ofe first		Week-Day Hours
C. T. Takahashi Co. 212 Fifth Ave. So.		8'6

Instructions

Instructions not covered in itemized list should be written on a blank line, above after-hour instructions. Also use a blank line to supplement any of the itemized instructions. This card may also be used for permanent addresses and forwarding instructions.

To facilitate reference to the record, the following color signals should be used:

Purpose	Color	Remington Rand Catalogue No.
Get Receipt	Green	0374
After-hour Instructions } Forwarding Instructions }	Purple	0373

[Endorsed]: Filed May 19, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 29—Part 1

Department of State

[Stamped] Division of Controls, Jul. 25, 5:30 PM '41. Department of State.

[Stamped] Division of Controls. Jul. 23, 2:26 PM '41. Department of State.

United States of America

Application for License to Export Articles and Materials (Other Than Arms, Ammunition and Implements of War and Tin-Plate Scrap) Designated by the President as Necessary to the National Defense Pursuant to Section 6 of the Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

[Pencil Note] C. T. Takahashi, et al.

[Pencil Note] Edw. Osawa.

Duplicate

China

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.
- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.

- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

- (1) Date of application July 16, 1941.
- (2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

- (3) Name of applicant China Import & Export Company

By LEO NYE SING.

(To be signed in ink)

- (4) Consignee in foreign country
Name Hua Hsin Company
Nationality Chinese

Address

Street 320 Szechuen Road

City Shanghai

State or province.....

Country China

(5) Purchaser in foreign country

Name Hua Hsin Company

Nationality Chinese

Address

Street 320 Szechuen Road

City Shanghai

State or province.....

Country China

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.

3

(each tank weighs about 270 long tons)

(7) Description of articles or materials to be exported

(8) Approximate net value

Complete New Steel Dismantled Storage Tanks and accessories for erection purposes.

\$29,500.00 f.o.b. Seattle per tank [In Pencil]:

3

88,500

FSH

[Stamped] Office of Administrator of Export Control. Jul. 25, 1941. Disapproved. By J. W. Aug. 1, 1941.

[Stamped] Application Rejected. The Administrator of Export Control has determined that this proposed exportation would be contrary to the interest of the National Defense. Rejection No. H T-26-R.

[Stamped] Received Jul. 24, 1941. Department of Export Control.

(9) Source of material to be exported (see paragraph (e) above):

Graver Tank Company, East Chicago, Indiana.

(Name)

(Address)

- (10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:

Storage purposes.

Hua Hsin Company, 320 Szechuen Road,
Shanghai, China.

- (11) License to be sent to—(type, or print plainly)

Name China Import & Export Company

Street 212 Fifth Ave. So.

City and State Seattle, Wash.

- (12) Consignor in United States

Name China Import & Export Company

Nationality United States

Address:

Street 212 Fifth Ave. So.

City Seattle

State Washington

- (13) Seller in United States

Name China Import & Export Company

Nationality United States

Address:

Street 212 Fifth Ave. So.

City Seattle

State Washington

Nature of business Importers & exporters

- (14) Port of exit in the United States from which it is proposed to export the shipment Seattle, Wash.

License is hereby granted to the applicant mentioned herein to export from the United States of America to Shanghai, China the articles or mate-

rials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For official use only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

[Endorsed]: Filed May 19, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 29—Part 2

Department of State

[Stamped] Division of Controls. Apr. 18, 1941.

Department of State.

[Stamped] Division of Controls, May 8, 1941.

Department of State.

Appeal

United States of America

Application for License to Export Articles and Materials (Other Than Arms, Ammunition and Implements of War and Tin-Plate Scrap) Designated by the President as Necessary to the National Defense Pursuant to Section 6 of the Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

H T

Duplicate

Japan

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.
- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.

- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,

Washington, D. C.

(1) Date of application April 16, 1941.

(2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

(3) Name of applicant C. T. Takahashi & Company

By IRA L. EWERS.

(To be signed in ink)

(4) Consignee in foreign country

Name Mikuni Shoko Company

Nationality Japanese

Address

Street No. 4, Gokencho, Kanda

City Tokyo, Japan

State or province.....

Country Japan

- (5) Purchaser in foreign country
 Name Mikuni Shoko Company
 Nationality Japanese

Address

Street No. 4, Gokencho, Kanda

City Tokyo, Japan

State or province.....

Country Japan

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.

(7) Description of articles or materials to be exported

(8) Approximate net value

3

(each tank weighs about 270 long tons)

Complete New Steel Dismantled Storage Tanks and accessories for erection purposes.

Seattle per tank \$22,500.00 f.o.b. [In Pencil]: 67,500

[Stamped] Division of Controls, Apr. 16, 1941.
 Department of State.

[Stamped] Received, Apr. 24, 1941. Office of Administrator of Export Control.

[Stamped] Administrator Export Control. Appeal Disapproved Apr. 29, 1941. By.....

[Stamped] Application Rejected. The Administrator of Export Control has determined that this proposed exportation would be contrary to the interest of the National Defense. Rejection No. H T-4-R May 14, 1941.

[Pencil Note] 13091C.

[Stamped] 02309.

- (9) Source of material to be exported (see paragraph (e) above):
Graver Tank Company, East Chicago, Indiana/Galamba Supply Company, Kansas City, Kansas.
purchased through Sonken
(Name) (Address)
- (10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:
Storage purposes by Mikuni Shoko Company.
- (11) License to be sent to—(type or print plainly)
Name C. T. Takahashi & Company
Street 212 Fifth Avenue South
City and State Seattle, Washington
- (12) Consignor in United States
Name C. T. Takahashi & Co.
Nationality United States
Address:
Street 212-5th Ave. So.
City Seattle
State Washington
- (13) Seller in United States
Name C. T. Takahashi & Company
Nationality United States
Address:
Street 212-Fifth Ave. So.
City Seattle
State Washington
Nature of business Importers & exporters

(14) Port of exit in the United States from which it is proposed to export the shipment.....

License is hereby granted to the applicant mentioned herein to export from the United States of America to Japan the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For official use only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

[Endorsed]: Filed May 19, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 29—Part 3

Department of State

[Stamped] Division of Controls, 71064, Feb. 10, 1941. Department of State.

United States of America

Application for License to Export Articles and Materials (Other Than Arms, Ammunition and Implements of War and Tin-Plate Scrap) Designated by the President as Necessary to the National Defense Pursuant to Section 6 of the Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

Duplicate

Japan

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.
- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.

- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,

Washington, D. C.

(1) Date of application February 8, 1941.

(2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

(3) Name of applicant C. T. Takahashi & Company

By EDW. Y. OSAWA.

(To be signed in ink)

(4) Consignee in foreign country

Name Mikuni Shoko Company

Nationality Japanese

Address

Street No. 4, Gokencho, Kanda

City Tokyo, Japan

State or Province.....

Country Japan

- (5) Purchaser in foreign country
 Name Mikuni Shoko Company
 Nationality Japanese

Address

Street No. 4, Gokencho, Kanda

City Tokyo, Japan)

State or Province.....

Country Japan

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.

(7) Description of articles or materials to be exported

(8) Approximate net value

3

(each tank weighs about 270 long tons)

Complete New Steel Dismantled Storage Tanks and accessories for erection purposes.

\$22,500.00 f.o.b. Seattle per tank
 [In Pencil]:
 \$67,500 total

[In Pencil]: 810 long tons.

(See letter attached)

[Stamped] Received Mar. 8, 1941. Office of Administrator of Export Control.

[Stamped] Received, Feb. 17, 1941. Office of Administrator of Export Control.

[Stamped] Division of Controls, Mar. 12, 1941. Department of State.

[Stamped] Office of Administrator of Export Control, Mar. 25, 1941. Disapproved. By R. S. C.

[Pencil Note] 13091C.

[Stamped] Application Rejected. The Administrator of Export Control has determined that this proposed exportation would be contrary to the interest of the National Defense. Rejection No. H T-4-R. Mar. 31, 1941.

- (9) Source of material to be exported (see paragraph (e) above):

Graver Tank Company, East Chicago, Indiana, purchased through Sonken Galamba Supply Company, Kansas City, Kansas.

(Name) (Address)

- (10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:

Storage purposes by Mikuni Shoko Company.

- (11) License to be sent to—(type, or print plainly)

Name C. T. Takahashi & Company

Street 212 Fifth Avenue South

City and State Seattle, Washington

- (12) Consignor in United States

Name C. T. Takahashi & Co.

Nationality United States

Address:

212-5th Ave. So.

City Seattle

State Washington

- (13) Seller in United States

Name C. T. Takahashi & Company

Nationality United States

Address:

Street 212 Fifth Ave. So.

City Seattle,

State Washington

Nature of business Importers and exporters

(14) Port of exit in the United States from which it is proposed to export the shipment.....

License is hereby granted to the applicant mentioned herein to export from the United States of America to Japan the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For official use only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

[Endorsed]: Filed May 19, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 29—Part 4
(Rejected)

Department of State

[Stamped] Division of Control, Apr. 18, 1941.

Department of State.

[Stamped] Division of Controls, May 8, 1941.

Department of State.

Appeal

[Written in pencil] Appeal.

United States of America

Application for License to Export Articles and Materials (Other Than Arms, Ammunition and Implements of War and Tin-Plate Scrap) Designated by the President as Necessary to the National Defense Pursuant to Section 6 of the Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

H T

Duplicate

Japan

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.
- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.

- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

- (1) Date of application April 16, 1941.
- (2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

- (3) Name of applicant C. T. Takahashi & Co.
By IRA L. EWERS.

(To be signed in ink)

- (4) Consignee in foreign country
Name Mikuni Shoko Company
Nationality Japanese
Address
Street No. 4, Gokencho, Kanda
City Tokyo, Japan
State or Province.....
Country Japan

(5) Purchaser in foreign country

Name Mikuni Shoko Company

Nationality Japanese

Address

Street No. 4, Gokencho, Kanda

City Tokyo, Japan

State or Province.....

Country Japan

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.

(7) Description of articles or materials to be exported

(8) Approximate net value

6

(each tank weighs about 270 long tons)

Complete used steel dismantled storage tanks and accessories for re-erection purposes.

\$17,500 f.o.b. Seattle per tank
[In Pencil]:
105,000

(See letter attached)

[Stamped] Division of Controls, Apr. 16, 1941.
Department of State.

[Stamped] Received Apr. 24, 1941. Office of Administrator of Export Control.

[Pencil Note] 13092C.

[Stamped] 02308.

[Stamped] Administrator Export Control. Appeal Disapproved, Apr. 29, 1941. By.....

[Stamped] Application Rejected. The Administrator of Export Control has determined that this proposed exportation would be contrary to the interest of the National Defense. Rejection No. H T-3-R. May 14, 1941.

- (9) Source of material to be exported (see paragraph (e) above):

Pepper Tank & Pipe Company, Denver,
Colorado Tanks from Casper, Wyoming.

(Name)

(Address)

- (10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:

Storage purposes by Mikuni Shoko Company.

- (11) License to be sent to—(type, or print plainly)

Name C. T. Takahashi & Company

Street 212 Fifth Avenue South

City and State Seattle, Washington

- (12) Consignor in United States

Name C. T. Takahashi & Co.

Nationality United States

Address:

Street 212-5th Ave. S.

City Seattle

State Washington

- (13) Seller in United States

Name C. T. Takahashi & Co.

Nationality United States

Address:

Street 212-5th Ave.

City Seattle

State Washington

Nature of business Importers and
exporters

- (14) Port of exit in the United States from which it is proposed to export the shipment Seattle, Portland & Tacoma.

License is hereby granted to the applicant mentioned herein to export from the United States of America to Japan the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For official use only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

PLAINTIFF'S EXHIBIT No. 29—Part 5

(Rejected)

Department of State

United States of America

Application for License to Export Articles and Materials (Other Than Arms, Ammunition and Implements of War and Tin-Plate Scrap) Designated by the President as Necessary to the National Defense Pursuant to Section 6 of the Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

Duplicate

Japan

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.

- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.
- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

(1) Date of application February 7, 1941.

(2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

(3) Name of applicant C. T. Takahashi & Co.

By EDW. Y. OSAWA

(To be signed in ink)

(4) Consignee in foreign country

Name Mikuni Shoko Company

Nationality Japanese

Address

Street No. 4, Gokencho, Kanda

City Tokyo, Japan

State or Province.....

Country Japan

(5) Purchaser in foreign country

Name Mikuni Shoko Company

Nationality Japanese

Address

Street No. 4, Gokencho, Kanda

City Tokyo, Japan

State or Province.....

Country Japan

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.	(7) Description of articles or materials to be exported	(8) Approximate net value
--	---	---------------------------

6 (each tank weighs about 270 long tons) [In Pencil]: 1620 long tons	Complete Used steel dismantled storage tanks and accessories for re-erection purposes.	\$17,500 f.o.b. Seattle per tank [In Pencil]: \$105,000
---	--	---

(See letter attached)

[Stamped] Received Mar. 18, 1941. Office of Administrator of Export Control.

[Stamped] Received Feb. 17, 1941. Office of Administrator of Export Control.

[Stamped] 13092C.

[Stamped] Application Rejected. The Administrator of Export Control has determined that this proposed exportation would be contrary to the interest of the National Defense. Rejection No. H T-3-R. Mar. 31, 1941.

[Stamped] Office of Administrator of Export Control. Mar. 25, 1941. Disapproved. By R. S. C.

[Stamped] Division of Controls, 71065, Feb. 10, 1941. Department of State.

[Stamped] Division of Controls, Mar. 12, 1941. Department of State.

(9) Source of material to be exported (see paragraph (e) above):

Pepper Tank & Pipe Company, Denver,
Colorado Tanks from Casper, Wyoming.

(Name)

(Address)

(10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:

Storage purposes by Mikuni Shoko Company.

(11) License to be sent to—(type or print plainly)

Name C. T. Takahashi & Company

Street 212 Fifth Avenue South

City and State Seattle, Washington

(12) Consignor in United States

Name C. T. Takahashi & Co.

Nationality United States

Address:

Street 212-5th Ave. S.

City Seattle

State Washington

(13) Seller in United States

Name C. T. Takahashi & Company

Nationality United States

Address:

Street 212 Fifth Ave. S.

City Seattle

State Washington

Nature of business Importers & Exporters

(14) Port of exit in the United States from which it is proposed to export the shipment Seattle, Portland & Tacoma.

License is hereby granted to the applicant mentioned herein to export from the United States of America to Japan the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For official use only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

PLAINTIFFS' EXHIBIT No. 34

November 12, 1940

Messrs. Mikuno Shoko Company, Limited
Tokyo, Japan

Gentlemen:

Confirming our Japanese telephone conversation with you on November 9th, relative to obtaining our export declaration permits for the two tanks on the steamer "Capillo" from Texas and the three from Seattle on the steamer "Aratama Maru" and/or the "Cuba Maru".

This completes our order for the Rikugun and we wish to tell you that we are certainly pleased that we are able to make this arrangement. We actually have bought eleven additional old tanks for the Kaigun order, of which, we have given you shipping instructions on ten, namely, three on the "Aratama Maru" and the three on the "Tosei Maru" and four on the "Florida Maru" during December.

Inasmuch as this is a large purchase and we have not yet received your letter of credit and we ourselves have already placed our deposit on our purchase for these last old tanks, we will use your credit funds here with ours until we finish shipping these tanks to Japan. In the meanwhile, we trust that you will rush the letters of credit as quickly as possible as it is very important not to lose even a day.

We know the difficulties at the present moment in Japan and at the same time, we wish to thank you for the sincere and fast cooperation you have given us to date on this matter.

New Tanks: We trust that you will exert your full efforts for new tanks because as stated in our cables to you, the situation of old tanks being under the question of embargo is very great and this was all officially caused by our competitors who did not buy old tanks before but now, who have entered the market and caused a great commotion in California.

In Los Angeles alone, they raised the market price with their random inquiry, that is, they went everywhere trying to buy old tanks because they were successful last month to ship some out and just lately caused so much trouble about shipping old tank that the customs officers at Los Angeles started sending wires to Washington, D.C. to advise them of the large future movement of old tanks to Japan. This brought about a special meeting in the State Department of the National Defense Board and they automatically placed the old tank business under license system, we believe, about the 5th or 6th of this Month.

The license division will automatically, we believe, reject any license application for old tanks. Everyone at the present moment has put in their applications for shipping old tanks. We know Mitsui & Company has put in application for many and also Mitsubishi for three out of Texas alone that we know of.

This is a very unfortunate thing because we were doing these old tank business on a very careful and quiet system. We were handling out tank business in cooperation with another very large domestic firm and billing it to ourselves here at Seattle and shipping it quietly from here and Portland.

The Customs people here are very friendly, honest and sincere and were not perturbed at all about this movement as we have been doing this business even before the embargo. These other new people were over-anxious and have caused a serious condition.

It is unfortunate that the Japanese government, Department of Commerce and Industry do not understand and realize the situation in America today. We, therefore, believe that a definite understanding of embargo will be established on these tanks shortly through really no fault of ours but purely and simply through the fault of our competitors, Messrs. Mitsui & Company, Mitsubishi Sheji Kaisha, Asano Bussan Company and other Japanese firms, who tried to buy these old tanks for shipment to Japan.

Please understand clearly that we are not complaining about their raising prices or disturbing the whole market but the fact that they caused an embargo and this is a serious blow not only to us but for the sake of getting the material, which is to be used for peaceful purposes brought to the attention of the Defense Commission and raising a matter of doubt in their minds, the purpose of these tanks after they arrive in the Orient.

On these above grounds, we sincerely believe that we are entitled to handle new tanks for Japan exclusively or at least the Japanese Government should allow us to make purchases for them inasmuch as we may suffer a great loss on these old tank business through no fault of ours but through competitors who are thinking only of making a profit in selling tanks.

We also are left with fourteen old tanks in Wyoming and two old tanks that we brought all the way up from Texas to Portland. These tanks belong to us and we are stuck and at the same time being pressed very strongly by the suppliers who sold us these tanks and who demand full payment immediately for all of the tanks or they desire to take away our deposit.

If you will recall, in our early cables exchanged between ourselves this spring, we stated that it is impossible in this country today to do any business subject to an embargo, therefore, we ourselves today have no backward road but must take the consequences.

When we buy new tanks for your orders, we are very careful and will not disturb the market on this side in any way. Our supplier of tanks is not the Chicago Bridge and Iron Company people, but they are the Graver Tank Manufacturing Company, a firm which is practically ten times larger than the Chicago Bridge and Iron Company.

We also would be buying these from a very domestic firm, our friends, Sonken Galamba Supply

Company, and these tanks will be delivered from Chicago to Seattle and/or Portland, from which port we intend to ship out to Japan quietly. Also, there are several companies here, namely, Messrs. Woodbury & Company of Portland, who will contact the local firms, and we can make our purchase through them locally so no one will know or cause any misunderstanding in this market. We are now only hoping that you will be able to proceed and get us some orders for new tanks and get us started in the new tank business.

We understand in one of our conversation with you that the Navy desires large-sized tanks. Please approach them and find out how large a size they desire, and we wish to advise that upon receipt of this letter, you will cable us immediately because we can get any sized tanks that they desire, A.P.I. tank or the Chicago Bridge and Iron Company specification tanks.

Awaiting your cable reply, we remain,

Yours faithfully,

G. T. TAKAHASHI & COM-
PANY

President.

CTT:sk

[Endorsed]: Filed Sept. 30, 1942.

PLAINTIFFS' EXHIBIT No. 35

November 24, 1940

Messrs. Mikuni Shoko Company, Ltd.

Tokyo, Japan

Gentlemen:

We wish to confirm our telephone conversation of the 23rd, in which you have concluded new tank business for us on the basis that old tanks will not be permitted and that you have closed the order for eleven new tanks.

We are extremely pleased to receive this news because we have been feeling quite badly since the Government has now put the old tanks on a license basis. This new license basis practically means that they will give us rejection in the event that we make an application for license permit to ship old tanks. We hope to let you know by next week Monday, the 25th or 26th, our time, the definite shipping dates of the new tanks if possible.

As stated in our phone conversation, we have shipping instructions from our suppliers from January/February shipment but are trying to get definite dates from them but we are cabling this information to you so you can get us immediately letter of credit, as you know, buying these new tanks mean we must take them without an embargo clause.

Also, business on new tanks practically insists on having full payment with order or a large deposit until necessary bank arrangements are made for the complete purchase.

Market conditions: Possibly, you cannot realize in Japan the existing situation in this country. This very big National Defense Program will spend billions of dollars and the steel business in America, the production capacity is way behind the demand. When you ask steel mill for delivery of steel, the earliest you can possibly get it in your hands is about ninety days to five months.

Each week, there are changes in this country in the steel business. Everywhere, there is a great shortage of materials. Therefore, it is next to impossible to get long term option or do import or export business any more unless you have letter of credit on this side almost simultaneously with an order from Japan.

Therefore, we are writing you this letter with a view that you will prepare yourself for getting further new tank business from the Kaigun or from the Rikugun for shipment during March or April and upon receipt of this letter, please discuss this business thoroughly and if there is chance for this business, please get your order in now so that we may be assured of shipment at that time.

Awaiting your cable reply and thanking you very much for the order on the eleven tanks, we remain

Very truly yours,

C. T. TAKAHASHI & COM-
PANY

President

CTT:sk

[Endorsed]: Filed Sept. 30, 1942.

PLAINTIFF'S EXHIBIT No. 36

[Pencil Note]: Ruling Reserved

Cable Address: "XYMAS" Tokyo

Codes: Bentley's 2nd Phrase and Private

Phone: Shitaya (83) 5260. 5423. 9129.

Mikuni Shoko Company Limited

(Mikuni Commerce & Industry Co. Ltd.)

No. 4, Gokencho, Kanda,

Tokyo, Japan.

October 19, 1941.

Personal

Mr. C. T. Takahashi, President

Messrs. C. T. Takahashi and Company

Seattle, Washington

U. S. A.

Dear Mr. Takahashi,

It is a matter of congratulation that Mr. Osawa at last grasped the chance of going home at this occasion which we have been most anxiously waiting for.

We have a great honour in telling you that Mr. Osawa shared our business and private life with the greatest friendship and cooperation and we have been much delighted to have Mr. Osawa as our co-operator.

As to the details of the business, I trust, Mr. Osawa will give you the informations as well as my personal opinions of same and considering the situations now prevailing at both ends, allow me to abbreviate same. Only thing I want to emphasize here at this moment is that we have been working

with our best possible effort to bring the best results for mutual advantages, as you have done for us.

Fundamentally, I believe that the best policy as we can expect for mutual benefits is as repeated occasionally in my personal letters and the letters from my secretary, that you will work for us personally with your best efforts, as protecting and promoting your own interest and benefit and leaving all the problems relative which can be handled at this end to me entirely, and I shall work here for your interest and benefit as if protecting and promoting my own and leave the entire problems which can be solved at your end to you. Basing upon this fundamental idea, I am enclosing herewith my proposition for our contract of agency, which I shall be much pleased if you will kindly acknowledge. And thus, we shall have no room where the misunderstanding can be aroused.

It is a pity that our business has been brought to a deadlock owing to the sudden change of the international situations, in spite of our best efforts, however, please keep in mind that these our efforts shall be brought up to bear the best fruits when the chances arrive, to which end our best efforts are being paid even at this time.

I am looking for the coming peace-time, when our efforts will be recompensated and I shall represent you personally with the intentions mentioned above. Please prepare yourself for the coming days and do your best.

Your mother has been visiting me occasionally and was very glad to be informed that you are getting all-right because of your success in the local business. I join her here in praying for your continuous success in same.

With my best regards and wishes for your success and happiness. Mrs. Ikuta joins me in extending our warmest wishes for you and Mrs. Takahashi.

Yours faithfully,
For Mikuni-Shoko Co. Ltd.
M. GAITA.
Director

Encl: 2 Copies of Contract Form

MI/kk

PLAINTIFF'S EXHIBIT No. 37

Mikuni-Shoko Co. Ltd.

Tokyo, Japan

Confirmation of Telegram

Cable Address: "XYMAS" Tokyo

Codes Used:

Bentley's 2nd Phrase,

Acme and Private

Kohuo

From in Shanghai.

Date Sent July 15, 1941.

Date Received July 15, 1941.

Code	Translation
A C R	R C A
U Q V E O	size
L J J U S	24" x
N X I R S	12 x 12
J G I H F	20 Kilos
E Q S A C	60 Cycles
P O U M A	Band
E F I A N	same as
U I D J E	Frequency
U K H I A	applicable to
M U I I R	110 volts alteruating current
N V I I R	220 volts alteruating current
U D J I R	110 volts direct current
Y G J I R	220 volts direct current
Y C W O F	referring to your letter of 12th inst
S O Z U A	cannot
K M U N E	have
Y G G O B	United States Consul
M M E A F	issuo
N E V W A	certfricate
W D Y N F	as per my letter of 11th inst

PLAINTIFF'S EXHIBIT No. 38

Confirmation of Telegram

Mikuni-Shoko Co. Ltd.

Tokyo, Japan.

Cable Address: "XYMAS" Tokyo

Codes Used:

Bentley's 2nd Phrase,
and Private

To NEWYR Seattle.

Date Sent July 10, 1941.

Code Used Duo & Private.

Code	Translation
Z Z Y Z H	Frequency
R E O G L	maximum
G P E C N	300,000
V C Y S H	at first
H Z M Y J	550 Kilo
R I F L E	cycle
Y D Y N B	or below
D K X Y O	power
I U N I M	3
C R G I X	watt
I E N A O	or over

PLAINTIFF'S EXHIBIT No. 39

Anten-Wireless- (Japanese Letters)
Imperial Japanese Telegraphs

R. No.	Time sent	By	Collated by	Charges
				16.22
	Office of Destination		Class	-----

	Office of Origin	No.	Words	Postage stamps
	Tokyo		13	
Date	Time	Remarks		
July 2, 1941.		Anten		

N E W Y R

Seattle

N I A O P T G P U Y M I V V C D O Y S L R I L A M
R C A M E F R J M N O D W N U S V P L O G D G
U L F E X

- | | |
|-----------------------------|----------------------------------|
| 1. Make best possible offer | 6. RCA |
| C I F | 7. number |
| 2. Shanghai | 8. 234 |
| 3. 20 | 9. or |
| 4. Communication | 10. latest model |
| 5. receivers | 11. telegraph speci-fication for |

The address and signature of the sender

No. 4 Gokentyo, Kanda-ku, Tokyo.

Tel.: Sitaya (83) 5260, 5423, 9129.

MIKUNI SHOKO, CO., LTD.

M-99

PLAINTIFFS' EXHIBIT No. 40

Cable Address "XYMAS" Tokyo.

Codes: Bentley's 2nd Phrase and Private

Phone: Shitaya (83) 5260. 5423. 9129.

Mikuni Shoko Company Limited

(Mikuni Commerce & Industry Co. Ltd.)

No. 4 Gokencho. Kanda,

Tokyo, Japan.

Import Dept.

April 4, 1941.

Letter No. 21.

Mr. C. T. Takahashi, President.

Messrs. C. T. Takahashi & Co.,

Seattle, Wn., U. S. A.

Dear Mr. Takahashi, Re: Tractors, Mixers, etc.

The above mentioned construction machinery are very promising right now, since Lieutenant Col. Saito who has been in charge of tanks has been transferred to the staff of the construction section of the General Staff of the Japanese Expeditionary Force in China. I have written to him that I shall visit his place in near future to discuss the various problems, in which I have included these machinery.

Lieutenant Col. Saito is the officer who placed the first order for the tanks with us, after six months' quarrel with me. And when I came home he was more than pleased and introduced me to the Council of the Officers, to commemorate our works.

He was the officer who certified the landing of Mr. Osawa.

As I am arranging the catalogues and prints, I shall start in a few days for this business, and will give you my report in near future.

Assuring us of our best effort at all times, we
are

Yours truly,
For Mikuni-Shoko Co., Ltd.
ILLEGIBLE
Import Dept.

KK

[Pencil Note]: Orig. recd. from T Nov 25 1941
[Initials illegible]

PLAINTIFF'S EXHIBIT No. 41

Confirmation of Telegram

Mikuni-Shoko Co. Ltd.

Tokyo, Japan

Cable Address: "XYMAS" Tokyo

Codes Used:

Bentley's 2nd Phrase
and Private

To NEWYR Seattle

Date Sent July 10, 1941.

Code Used Duo & Private.

Code	Translation
Z Z Y Z H	Frequency
R E O G L	maximum
G P E C N	300,000
V C Y S H	at first
H Z M Y J	550 Kilo
R I F L E	cycle
Y D Y N B	or below
D K X Y O	power
I U N I M	3
C R G I X	watt
I E N A O	or over

[Pencil Note]: Denied 10-6-42.

PLAINTIFF'S EXHIBIT No. 42

Confirmation of Telegram

Mikuni-Shoko Co. Ltd.

Tokyo, Japan

Cable Address: "XYMAS" Tokyo

Codes Used:

Bentley's 2nd Phrase

Acme and Private

From Seattle.

Date Received July 12, 1941.

Translation

Your Telegram Tenth Cannot Understand Specify Receiver Weight Size and Operating Current Also Frequency in Kilo Cycles Number of Bands Also Do You Desire Transmitter If So Telegraph Detailed Specification.

[Pencil Note]: Denied 10-6-42.

PLAINTIFF'S EXHIBIT No. 43

Confirmation of Telegram

Mikuni-Shoko Co. Ltd.

Tokyo, Japan

Cable Address: "XYMAS" Tokyo

Codes Used:

Bentley's 2nd Phrase

Acme and Private

Kohuo

From in Shanghai.

Date Sent July 15, 1941.

Date Received July 15, 1941.

Code used

Code	Translation
A C R	R C A
U Q V E O	size
L J J U S	24" x
N X I R S	12 x 12
J G I H F	20 Kilos
E Q S A C	60 Cycles
P O U M A	Band
E F I A N	same as
U I D J E	Frequency
U K H T A	applicable to
M U I I R	110 volts alteruating current
N V I I R	220 volts alteruating current
U D J I R	110 volts direct current
Y G J I R	220 volts direct current
Y C W O F	referring to your letter of 12th inst
S O Z U A	cannot
K M U N E	have
Y G G O B	United States Consul
M M E A F	issuo
N E V W A	certfricate
W D Y N F	as per my letter of 11th inst

[Pencil Note]: Denied 10-6-42.

PLAINTIFF'S EXHIBIT No. 44

Confirmation of Telegram

Mikuni-Shoko Co. Ltd.

Tokyo, Japan

Cable Address: "XYMAS" Tokyo

Codes Used:

Bentley's 2nd Phrase

Acme and Private

From NEWYR Seattle Wash.

Date Sent July 7, 1941.

Date Received July 8th, 1941.

Code Used Inverted Acme.

Code	Translation
om(nso	Refer to your telegram of 2nd inst
ualko	no stock available
ipgaj	can possibly
wlahg	manufactured here
iyeto	telegraph
uidje	frequency
bvuuc	desired
jeh)ge	for
transmitters	Transmitters
pabha	also
reoej	powers
zicul	receiver
vumso	Refer to your telegram of 5th inst
ethia	application has been made
oypko	stop
cdahr	vessel
gjevq	in whose name
sofer	shall we use
izhia	on application
gfyve	instruct them
xceqa	book order
swauh	12
cdahr	vessel

Code	Translation
efier	used for
glofe	fertilizer
ityyi(u)	plant

[Pencil Note]: Denied 10-6-42.

DEFENDANT'S EXHIBIT No. A-3

Banco Aboumrad, S. A.
Apartado 138
Isabel La Catolica 33
Mexico, D. F.

[Stamped in left-hand margin]: Banco Aboumrad, S. A. DLS 20000-00-

Commercial Credit #1141
July 21, 1941.

Copy.

Original Issued.

Union Bank & Trust Co.
Eighth & Hill Sts.
Los Angeles, Cal.

Dear Sir(s)

We request you to open and transmit by mail a
cable
documentary revocable credit in favor of China
Irrevocable
Import & Export Co., Seattle, Washington. for account of Proveedora Metalica S. A., Motolinia 20. Mexico, D. F., in an amount not to exceed Twenty Thousand Dollars, U. S. Currency. Available by sight drafts drawn on your correspondents in Seattle. This credit is to cover shipment of about

250 Tons of 2,240 lbs. each of Used Steel Plates in first class condition, 5 ft. by 15 ft. and larger, 3/16 to 5/8 in. thickness.

To be shipped in one or more shipments xxxxxxxx f.o.b. Laredo, Texas or El Paso, Texas. Drafts must be accompanied by the following documents:

Ful set bills of lading in favor of Banco Aboumrad, S. A. or order blank endorsed.

Commercial invoice In name of Proveedora Metalica S. A.

Consular invoice Showing payment of the 5% fee.

Insurance policy Covering ordinary risks only from shipping point to Mexico D. F.....

Bills of lading to be dated on or before October 15, 1941.

We agree that drafts drawn under this credit will be honored if presented at drawee's address on or before October 15, 1941.

We are, Dear Sir(s).

Yours faithfully,

BANCO ABOUMRAD, S. A.

(Signature illegible.)

Export license issued by U. S. Government must be presented with documents.

N. B. Drafts drawn under this credit must state that they are "drawn under letter of credit No. 1141. Dated July 21, 1941.

[Endorsed]: Filed May 20, 1942.

[Endorsed]: Filed Oct. 1, 1942.

DEFENDANT'S EXHIBIT No. A-4

China Import & Export Company

Seattle, U. S. A.

Cable Address "Cieco"

All Codes Used

Agencies:-

Dairen

Mukden

Tientsin

Shanghai

Hankow

Hongkong

Kobe

Tokio

Contract. No. B-1-M

Contract of Sale.—

F.O.B. Terms.

Seller: China Import & Export Company.

Buyer: Proveedora Metalica, S. A., Mexico, D. F.

Commodity: Used steel plates.

Quality or grade: Plates to be 5 x 15 ft. and larger,
but plates to be in good and first class condi-
tion and to permit rivet holes. [Written in ink]
Thickness 3/16 to 5/8".

Quantity: Up to 250 (two hundred and fifty) tons
of 2240 lbs.

Packing: Loose.

Shipment: 250 tons of 2240 lbs.—within 60 days
after receipt of letter of credit and export license.

Price: \$75.00 (seventy five dollars, 0/100) U. S. Cy.
per ton of of 2240 lbs., F.O.B. Laredo, Texas,
U. S. A., or F.O.B. El-Paso, Texas, U S. A.
(Sellers option).

Weights: Railroad's weights to be final.

Payment: Irrevocable confirmed U. S. letter of
credit expiring October 15th., 1941, acceptable
by our bank to be established immediately.

Additional conditions: This contract is subject to
buyers obtaining necessary export license from
The Government of The United States of
America.

Accepted:

PROVEEDORA METALICA,
S. A.
GIL ALTSCHULER.
CHINA IMPORT & EXPORT
CO.
S. OKADA.

[Endorsed]: Filed May 20, 1942.

[Endorsed]: Filed Oct. 1, 1942.

DEFENDANT'S EXHIBIT No. A-5

Western Union Telegram

.NA25 36 NL-Mexico City 26

China Import And Export Co-
Seattle Wash-

1941 Sep 27 AM 4 14

Refer Yesterday Cable Please Suspend Shipment
Balance Tank Plates as My Firm Has Appeared in
the Black List Due to Mistake Stop Am Already
Trying This Matter With American Embassy and
Soon Will Be Cleared Publicly-

GIL ALTSCHULER.

[Endorsed]: Filed May 20, 1942.

[Endorsed]: Filed Oct. 1, 1942.

DEFENDANT'S EXHIBIT A-6

WESTERN UNION

Moga

Ta2 D1 Chg Tak Co

Mr Gil Altschuler

Provedora Metalica S A

Motolinia 20

Mexico City Mexico

Referring Your Wire Twentyseventh Under the
Circumstances We Must Consider Balance of Tank
Plates Cancelled as We Cannot Deal With Any
Firm Blacklisted by the United States Government
as We Only Can Operate According to Our Gov-

ernment Regulations Stop When and If You Are Able to Clear Up Your Position With Our Government We Will Be Glad to Entertain Further Business Proposals From You and If There Is Anything We Can Do at Present to Assist You Please xxxxxxx Feel Free to Call on Us as We Desire to Cooperate in Any Way Possible.

China Import and Export Company.

[Stamped]: R2 Wu J 945A T.

[Endorsed]: Filed May 20, 1942.

[Endorsed]: Filed Oct. 1, 1942.

DEFENDANT'S EXHIBIT No. A-7

Provedora Metalica, S. A.

Compra Y Venta De Marquinaria Y Toda Clase De
Materiales De Hierro elefonos Ereic. 13 84-13-
Mex J - 56 - 23 Motolina 20 - Despacho 506
Mexico D. F.

July 26, 1941

China Import & Export Co.
Seattle, Wash.

Gentlemen:

Inclosed you will find the affidavit, properly legalized before the United States Consulate in this city, corresponding to our order for 250 (Two Hundred Fifty) tons of used Steel Plates in—first class condition in sizes 5 ft. by 15 ft. and larger and 3/16 to 5/8 in. in thickness, that we made through your Mr. Sig Okada during his stay in this city, asking you very kindly that upon receipt of this you should

make the corresponding petition to Washington, D. C., so as to obtain the export license as briefly as possible.

Once you have the license you will please advise us, so that we can mail to you the instructions to the respective shipments/

With kindest regards to Mr. Shenker and Mr. Okada, we are please to remain

Yours very truly,

PROVEEDORA METALICA,
S.A.

(Signed) G. ALLTSCHULER.

GA/ma

Provedora Metalica S.A.

Mexico D.F.

Affidavit

To Whom It May Concern:

I, Gil Altschuler, Jewish, born in Warsaw, Poland, since 1923 living in Mexico, since 1932 Mexican Citizen, one of the associates and managers of the Proveedora Metalica, S. A., Motolinia 20, Mexico, D.F., being duly sworn, depose and say:

The Proveedora Metalica, S.A. are dealers in steel and iron goods. We have every time imported steel and iron goods to sell in the Mexican market.

Our order to the China Import & Export Company, of Seattle,—Washington, consisting of:

250 (two Hundred and Fifty) tons of 2,240 lbs. each, of used Steel plates in first class condition, 5 ft. by 15 ft., and larger, 3/16 to 5/8 in. in thickness.

is to be solely for domestic use in the Republic

of Mexico and is not to be reshipped or exported out of the Republic of Mexico.

Sworn to before me this 25 day of July, 1941.

G. ALTSCHULER.

Mexico, Julio 25 de 1941.—Con esta fecha se firmó y ratificó ante mi, lla presente, por el senor Gil Altschuler—Doy Fe-El Adserito a la Notaria Publica No. 13.

LIC. ALVARO MAGANA
PEREZ.

United Mexican States, Mexico,
Federal District Consulate General of the
United States of America—ss.

I, Louis B. Mazzeo, Vice Consul of the United States of America at Mexico, Federal District, United Mexican States, duly commissioned and qualified, do hereby certify that Alvaro Magana Perez whose true signature and official seal are, respectively, subscribed and affixed to the annexed document, was, on the twenty sixth day of July, 1941, the day of his certification thereof, Notary Public No. 13 in Mexico, D. F., Mexico, to whose official acts faith and credit are due.

In Witness Whereof I have hereunto set my hand affixed the seal of the Consulate General at Mexico, D. F., Mexico, this twenty-sixth day of July, 1941.

Vice Consul of the United States of America.

Service No. 4853.

Fee \$2.00 U. S. cy.

Tariff No. 31.

[Endorsed]: Filed May 20, 1942.

[Endorsed]: Filed Oct. 1, 1942.

DEFENDANT'S EXHIBIT A-8

Department of State

[Stamped] Received, Department of State, 1941
May 31 AM 10:00. Division of Communications and
Records.

[Stamped] Air Mail.

[Stamped] Division of Controls, May 31, 11 41,
AM '41. Department of State.

United States of America

Application for License to Export Articles and Ma-
terials (Other Than Arms, Ammunition and
Implements of War and Tin-Plate Scrap) Des-
ignated by the President as Necessary to the
National Defense Pursuant to Section 6 of the
Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

Original

Japan

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.

- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.
- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

- (1) Date of application April 23, 1941.
- (2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

- (3) Name of applicant C. T. Takahashi & Company

By CHARLES T. TAKAHASHI
(To be signed in ink)

- (4) Consignee in foreign country
Name Mitsui Bussan Kaisha, Ltd.
Nationality Japanese
Address
Street #3 Kaigan-dori, Kobe-ku
City Kobe, Japan
State or Province.....
Country Japan

- (5) Purchaser in foreign country
Name Mitsui Bussan Kaisha, Ltd.
National Japanese
Address
Street #3 Kaigan-dori, Kobe-ku
City Kobe, Japan
State or Province.....
Country Japan

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.	(7) Description of articles or materials to be exported	(8) Approximate net value
--	---	---------------------------

100,000 pieces	Used Burlap Bags	\$10,250.00
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[Stamped] Application Rejected. This application has been rejected because it does not conform to existing requirements as published in export control schedules. A new application conforming to these requirements will be considered.

[Endorsed] Filed May 20, 1942.

[Pencil Notation] Addressed envelope.

(9) Source of material to be exported (see paragraph (e) above):

From various dealers of burlap bags.

(Name)

(Address)

(10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:

For re-use in sacking feeding commodity.

Mitsui Bussan Kaisha, Ltd., #3 Kaigan-dori,
Kobe-ku, Kobe, Japan.

(11) License to be sent to—(type or print plainly)

Name C. T. Takahashi & Company

Street 212 Fifth Avenue South

City and State Seattle, Washington

- (12) Consignor in United States
Name C. T. Takahashi & Company
Nationality American

Address:

Street 212 Fifth Ave. So.

City Seattle

State Washington

- (13) Seller in United States
Name C. T. Takahashi & Company
Nationality American

Address:

Street 212 Fifth Ave. So.

City Seattle

State Washington

Nature of business Importers & exporters

- (14) Port of exit in the United States from which it is proposed to export the shipment Pacific Coast Port.

License is hereby granted to the applicant mentioned herein to export from the United States of America to Japan the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For official use only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

PLAINTIFF'S EXHIBIT No. A-9

China Import & Export Company

Certificate of Firm Name

56166—8796

Know All Men By These Presents:

That I, the undersigned, C. T. Takahashi do hereby certify that I am conducting a general importing and exporting business under the assumed name and style of "China Import & Export Company", located at 212 Fifth Avenue South, in the City of Seattle, County of King, State of Washington; that I am the sole owner of said business; and I further certify that I shall so conduct my said business as aforesaid under the assumed name and style of "China Import & Export Company". That my post office address is as follows: C. T. Takahashi, 212 Fifth Avenue South, Seattle, King County, Washington.

In Witness Whereof, I have hereunto set my hand this 20th day of January, A. D. 1927.

C. T. TAKAHASHI.

Filed In County Clerk's Office, King County, Wash., Jan. 20, 1927. Abe N. Olson, Clerk. By S. R. Battenfield, Deputy.

In the Superior Court of the State of Washington
for the County of King

State of Washington,
County of King—ss.

No. 56166—8796

In the Matter of the
Certificate of Firm Name of
China Import & Export Company

I, Carroll Carter, County Clerk of King County,
and ex-officio Clerk of the Superior Court of the
State of Washington, for the County of King, do
hereby certify that I have compared the foregoing
copy with the original Certificate of Firm Name.

.....

.....

.....

in the above entitled matter as the same appears on
file and of record in my office, and that the same is
a true and perfect transcript of said original and
of the whole thereof.

In Testimony Whereof, I have hereunder set
my hand and affixed the Seal of said Superior Court
at my office at Seattle this 29th day of September,
1942.

CARROLL CARTER,
Clerk.

By B. H. MOFFETT,
Deputy Clerk.

[Endorsed]: Filed Oct. 1, 1942.

DEFENDANT'S EXHIBIT A-10

In Reply Refer to
File No. 96

Treasury Department
United States Customs Service
Seattle, Wash.

[Cut, Fig. 5.]

Office of the Collector
District No. 30

Address All Communications
for this Office to the Collector

December 21, 1940.

C. T. Takahashi & Co.,
212-5th Ave. So.,
Seattle, Wash.

Sirs:

Referring to your letter of the 16th instant relating to the exportation of 18 dismantled storage tanks and your inquiry as to whether the provisions of Presidential Proclamation which become effective at midnight on December 29th next would prohibit the exportation of any of the said dismantled tanks which were not laden prior to that date, you are advised the following telegrams were sent to and received from the Secretary of State relative to the said matter.

“Referring to application of C T Takahashi and Company of Seattle requesting license to export eighteen complete used steel dismantled storage tanks and accessories for reerection purposes for exportation to Japan it is noted State Department

holds no license required for exportation under provisions proclamation July second last stop Said exporters advise that special permission has been granted by State Department for exportation of said eighteen tanks although some will be loaded subsequent to December 29th next when provisions of new proclamation become effective stop Please confirm whether said eighteen tanks may be exported subsequent to December 29th without further formality." Haas, Collector.

"Your telegram December 16 if eighteen dismantled storage tanks are intended for reerection and permanent installation and can be declared by exporter under commodity No. 6043 of Schedule B they may be exported without license before or after December 29 1940 Takahashi has represented to administrator of export control that such the case please report action taken." Cordell Hull Secretary of State.

Your attention is invited to the instructions from the Secretary of State that the said tanks may be exported without license before or after December 29, 1940 as your company has represented to the State Department that the said tanks are intended for re-erection and permanent installation and can be declared by the exporter under commodity classification 6043 of Schedule B of the Department of Commerce.

Respectfully,

ROY L. BALLINGER,

Assistant Collector.

Department of State

Branches:	Phones: EL. 5166
Tokio	EL. 5167
Vancouver, B. C.	Cable Address
Portland, Ore.	“CTTKS”
Oakland, Cal.	Bentley’s Phrase Code
Agencies:	A B C 5th Edition
Osaka	Private
Kobe	Acme

C. T. Takahashi & Co.
Exporters and Importers
212-216-5th Ave. So.,
Seattle, Wash.

December 16, 1940

Mr. O. W. Dam,
Deputy Collector of Customs
Federal Building
Seattle, Washington

Dear Sir:

Confirming our conversation with you Saturday, we are pleased to enclose herewith two photostatic copies of our application which is properly marked and authority given us. Now, since receiving this special permission, we have definitely asked the Division of Control Board our position after December 30th, and we wish to go on record that they replied to us that this is a special permission granted to us on 18 tanks, only in view of the appeals and efforts in Washington to date. The latest proclamation does not affect us, but in the event of any additional tanks, we will be required to apply for license, and in fact, it is their opinion that we will not be granted same.

If there is any doubt in your mind as to our efforts to date, we desire you to wire Washington immediately. This last Friday and Saturday, we have been working very hard on this point as it is, you know, most important to us that we are allowed shipments after the 30th.

Now, everything has been delayed and our own program was delayed by previous misunderstanding, first of all, and secondly, now we have the element of weather where it is practically 10 below in Wyoming, which now prevents our speeding up cutting down the tanks, and this may cause a delay for immediate shipment which is really beyond our control in getting this material out.

I do not want to take any more chances in our business with the Orient, and on our advice from our attorney in Washington today, we received further instructions as follows:

“Enforcement Division Bureau of Customs Suggest If the Collector Is Still in Doubt He Should Telegraph the Division of Controls, State Department.”

Also for your own information, we have taken this up through our attorneys in Washington, and my own Managing Director is still in Washington and in New York until this whole situation gets cleared up, and I can have him do any work you desire.

We have personally had very lengthy conversations, discussions, and conversations with Colonel Trunk, Member of the National Defense Commission Board and Division of Controls, who has given

us his personal assurance that our application for license returned is in one way a kind of a license giving us authority for the 18 tanks regardless of this late proclamation, etc., and that we are to have the license marked on the back each time a shipment is made, until the total 18 tanks are shipped out.

We trust that we have covered all the points in our discussion with you the other day, and we also wish to thank you for the assistance and kind cooperation you have always given us.

Very truly yours,

C. T. TAKAHASHI & COMPANY.

C. T. TAKAHASHI.

President.

CTT:CK

Encl-2

No oral representations or statements of any representative of this firm shall be binding unless confirmed in writing by this company through its principals.

[Stamped] Received Dec. 16, 1940. Marine Division, U. S. Customs, Seattle.

[Stamped] Division of Controls, 11286, Nov. 19, 1940. Department of State.

United States of America

Application for License to Export Articles and Materials (Other Than Arms, Ammunition and Implements of War and Tin-Plate Scrap) Designated by the President as Necessary to the National Defense Pursuant to Section 6 of the Act of Congress Approved July 2, 1940

(Applications to be made in duplicate)

Original

Japan

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.
- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.

- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.
- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

(1) Date of application November 19, 1940.

(2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

(3) Name of applicant C. T. Takahashi & Co.

By EDW. Y. OSAWA.

(To be signed in ink)

(4) Consignee in foreign country

Name Mikuni Shoko Company

Nationality Japanese

Address

No. 4 Gokencho, Kanda

City Tokyo

State or Province.....

Country Japan

(5) Purchaser in foreign country

Name Mikuni Shoko Company

Nationality Japanese

Address

Street No. 4 Gokencho, Kanda

City Tokyo

State or Province.....

Country Japan

- | | | |
|--|---|---------------------------|
| (6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons. | (7) Description of articles or materials to be exported | (8) Approximate net value |
|--|---|---------------------------|

18

- | | | |
|--|---|----------------------------------|
| (each tank weighs about 270 long tons) | Complete used steel dismantled storage tanks and accessories for reerection purposes. | \$17,500 f.o.b. Seattle per tank |
|--|---|----------------------------------|

(see attached letter)

[Stamped] No License Required for this Exportation Under the Regulations Issued Pursuant to the President's Proclamation of July 2, 1940.

Source of material to be exported (see paragraph (e) above):

(9) 2 Sonken Galamba Supply Co., Kansas City, Mo. (tanks from Corpus Christi, Tex.).

14 Pepper Tank & Pipe Co., Denver, Colo. (tanks from Casper, Wyo.).

2 Keyes Tank & Supply Co., Casper, Wyo. (tanks from Casper, Wyo.).

(Name)

(Address)

- (10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:

Storage purposes by Mikuni Shoko Company.

- (11) License to be sent to—(type or print plainly)

Name Ira L. Ewers

Street 1308 F St., N.W.

City and State Washington, D. C.

- (12) Consignor in United States
Name C. T. Takahashi & Co.
Nationality United States
Address:
Street 212 5th Ave. So.
City Seattle
State Washington
- (13) Seller in United States
Name C. T. Takahashi & Co.
Nationality United States
Address:
Street 212 5th Ave. So.
City Seattle
State Washington
Nature of business Importers & Ex-
porters
- (14) Port of exit in the United States from which
it is proposed to export the shipment Seattle, Port-
land & Tacoma.

License is hereby granted to the applicant mentioned herein to export from the United States of America to Japan the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For official use only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

[Stamped]: Received Dec. 16, 1940. Marine Division U. S. Customs, Seattle.

[Endorsed]: Filed Oct. 6, 1942.

DEFENDANT'S EXHIBIT No. A-11

H. M. Capron,
Pres. and Treas.

J. V. Sullivan
Secretary

Equipment Storage Corporation
Our Specialty
Heavy Machinery and Merchandise Space
Under Crane
Warehouse
7450 South Ashland Avenue
Chicago
Telephones
Office—Nevada 2400
Warehouse—Prospect 4616
Office
1150 South Washtenaw Avenue
Chicago

June 23, 1941

C. T. Takahashi and Co.,
212 5th Ave. So.,
Seattle, Washington

Attention—Mr. C. T. Takahashi

Gentlemen,

We wish to acknowledge receipt of your telegram of June 17th, and you can rest assured that, if any customers come to our warehouse to inspect your material, they will never find out from us where it came from, what the storage charges are or any arrangements you have made with us. We shall show them every courtesy and do everything we can to aid them in their inspection of the materials, but will go no further.

Defendant's Exhibit No. A-11—(Continued)

I am writing you another letter, which I am enclosing in this same envelope, written on the letter-head of the Equipment Corporation of America, a concern we are associated with, and would appreciate hearing from you in the enclosed, postage paid, envelope,

Yours very truly,
EQUIPMENT STORAGE
CORPORATION
JOS. V. SULLIVAN
Jos. V. Sullivan

JVS:MH

Equipment Corporation Of America
Telephone Nevada 2400
Chicago
Certified Construction Equipment
Reply to Chicago
Offices and Shops
Chicago: 1150 South Washtenaw Avenue
Pittsburgh: Post Office Box 933
Philadelphia: 1505 Race Street
Cable Address "E C A" Chicago and
Philadelphia
Codes: A B C of Western Union
June 23, 1941

C. T. Takahashi and Co.,
212 5th Ave. So.,
Seattle, Washington

Attention—Mr. C. T. Takahashi

Gentlemen,

The writer is also associated as Vice-President

Defendant's Exhibit No. A-11—(Continued)
and General Sales Manager with the above concern. We are one of the largest dealers in new and used equipment in the Country, and included in the products we sell are storage tanks of all kinds for the storage of aggregate, minerals and oil.

We believe we are probably in as good, if not better, position to dispose of these three tanks for you, if you desire to sell them, than anybody in the business, and are wondering if you could give us a description of these tanks, together with the price you are asking for same, f.o.b. cars, Chicago; this price to be net to us, and any profit that we make to reimburse us for our costs in advertising, selling and disposing of these for you, to be added on to this price by ourselves.

If you prefer that our prospective customers do not know for whom these tanks were manufactured, or by whom they were manufactured, we will respect your wishes. It would, of course, be necessary for us to guarantee to furnish blue prints for the erection of same and also guarantee completeness; in fact it might be necessary that we would have to show them erection drawings before they would place their order for same, and I would like to know whether you are in possession of such drawings, and could loan same to us if we had anybody ready to purchase same. Our terms of payment would be cash when loaded.

We understand that these are 80,000 gal. capacity each and what we would like to know would be the diameter, height and whether they have bottoms and tops, weight each and in fact the best

Defendant's Exhibit No. A-11—(Continued)
thing would be a condensed specification of the proposal that you received from the manufacturer.

If you could give us this information by return mail, in the enclosed, postage paid envelope, we would be very grateful, as we think we could dispose of these for you in a short while.

Yours very truly,
EQUIPMENT CORPORATION
OF AMERICA
JOS. V. SULLIVAN
Jos. V. Sullivan
General Sales Manager

JVS:MH

Bought Service Rented Sold
(Cut) E C A Rebuilt

Quotations Subject to Change Without Notice. All the Above Equipment Is Offered Subject to Prior Sale or Other Disposition.

All Agreements Are Contingent Upon Strikes, Lockouts, Accidents, Delays of Carriers or Other Delays Beyond Our Control.

June 27, 1941

Equipment Corporation of America
1150 South Washtenaw Avenue
Chicago, Illinois
Attention: Mr. Jos. V. Sullivan

Gentlemen:

We are very happy to note that you also have this company and at the present moment, we are

Defendant's Exhibit No. A-11—(Continued)
in negotiation with a certain party in Mexico and another in Los Angeles, who has a buyer in your district for our tanks.

We had been seriously contemplating on holding on to our tanks for at least \$25,000 each or better. These tanks are all complete and 80,000 barrel capacity tanks. In fact, it was our intention to sell them as-is, where-is your warehouse.

We expect a definite reply one way or the other from the parties with whom we are working these tanks and we should know outcome within the next ten days. In the event, we are unable to dispose of them to these parties, we shall be very glad to have you work your territory for us.

We understand there is a very large development in oils in Illinois and I am sure there should be a very strong demand for these items inasmuch as it is almost impossible to buy new tanks and get delivery within six months to a year.

We regret that we were not aware of your Equipment Corporation of America till this date. However, we are very pleased to make this good connection with your firm.

We may ask you to look around for our requirements in the future in your district for us.

Trusting that we may be able to get together with your goodselves on some business in the very near future, we remain

Very truly yours,
C. T. TAKAHASHI & COM-
PANY

By

CTT:sk

Defendant's Exhibit No. A-11—(Continued)

Airmailgram

Equipment Corporation of America

Certified Construction Equipment

Bought Service Rented Sold

(Cut)—E C A Rebuilt

Reg. Trade Mark

Main Office

Chicago: 1150 So. Washtenaw Ave.

District Offices

Philadelphia: 1505 Race St.

Pittsburgh: P. O. Box 933

Shops and Warehouses

Chicago

Philadelphia

Pittsburgh

Cable Address "E C A" Chicago and

Philadelphia

Codes: A B C or Western Union

Chicago

Telephone Nevada 2400 1150 So. Wastenaw Ave.

July 9, 1941

C. T. Takahashi and Co.,

212 5th Ave. So.,

Seattle, Washington

Attention—Mr. C. T. Takahashi

Gentlemen,

I appreciate your letter of June 27th, and the fact that we have heard nothing further from you makes me believe that your deal in Mexico and Los Angeles for the three tanks has not materialized.

Defendant's Exhibit No. A-11—(Continued)

I would appreciate your advising me by return mail if we may go ahead and offer these tanks for sale. Under present conditions, everything is being offered subject to prior sale and if you should get an order for these tanks from somebody else, before we sell them, there would be no harm done. In the meantime, if you would make your offering subject to prior sale and we were to sell them for you, you could gracefully withdraw your proposition from any other interested clients.

We have several people we believe might be interested in these tanks, and would appreciate your advising us if we may quote them on the basis of paying you \$25,000.00 each for them.

We would appreciate hearing from you by return mail.

We presume that we could secure the loan of the blue prints and specifications on these to show any party who was actually interested, and also presume that complete erection drawings would be available for anybody who would purchase these tanks.

I recently mailed you one of our latest stock lists and if you should receive any inquiries for equipment similar to that listed therein, we would be very pleased to hear from you.

Yours very truly,

EQUIPMENT CORPORATION
OF AMERICA

JOS. V. SULLIVAN

Jos. V. Sullivan

General Sales Manager

Defendant's Exhibit No. A-11—(Continued)

All the Above Equipment Is Offered Subject to Prior Sale or Other Disposition. All Agreements Are Contingent Upon Strikes, Lockouts, Accidents, Delays of Carriers or Other Delays Beyond Our Control. Quotations Subject to Change Without Notice.

Equipment Corporation Of America

Telephone Nevada 2400

Chicago

Certified Construction Equipment

Reply to Chicago

Offices and Shops

Chicago: 1150 South Washtenaw Avenue

Pittsburgh: Post Office Box 933

Philadelphia: 1505 Race Street

Cable Address "E C A" Chicago and

Philadelphia

Codes: ABC or Western Union

July 26, 1941

C. T. Takahashi and Co.,

212 5th Ave So.,

Seattle, Washington

Attention—Mr. C. T. Takahashi

Gentlemen,

We would appreciate your advising sale price on the three 80,000 bbl. tanks which you have stored in the Equipment Storage Corporation warehouse.

As mentioned in a previous letter, if you could give us this price, subject to prior sale, and if we got an order for same and you had other places to

Defendant's Exhibit No. A-11—(Continued)
 put them, there would be no harm done. We have
 several places that we would like to quote on these
 tanks.

Yours very truly,
EQUIPMENT CORPORATION
OF AMERICA
JOS. V. SULLIVAN
 Jos. V. Sullivan
 General Sales Manager

JVS:MH

Bought Service Rented Sold
 (Cut) E C A Rebuilt

Quotations Subject to Change Without Notice. All
 the Above Equipment Is Offered Subject to Prior
 Sale or Other Disposition.

All Agreements Are Contingent Upon Strikes,
 Lockouts, Accidents, Delays of Carriers or Other
 Delays Beyond Our Control.

Western Union

8

Jul 28 1941

Ta1 Tws Chg Tak Co

Mr. Joseph V. Sullivan General Sales xxxxxx Man-
 ager

Equipment Corporation of America

1150 South Washtenaw Ave

Chicago Ill

Re Your Letter Twenty Sixth Would Be Inter-
 ested in Selling One Complete Tank Whih XX

Defendant's Exhibit No. A-11—(Continued)

Which We have in Your Storage As Is Where Is
Twenty Five Thousand Dollars Net to Us Stop
For Your Information in Event of Any Question
We Wish to Advise That We Are One Hundred
Percent American Firm Therefore Not in Any Way
Connected with the Freezing Order of Last Week

Takahashi President C. T. Takahashi & Co.

End TWS

R1 WUJ CHG 3 MINS 951-A TNX

Equipment Corporation of America

Telephone Nevada 2400

Chicago

Certified Construction Equipment

Reply to Chicago

Offices and Shops

Chicago: 1150 South Washtenaw Avenue

Pittsburgh: Post Office Box 933

Philadelphia: 1505 Race Street

Cable Address "E C A" Chicago and Philadelphia

Codes: A B C or Western Union

July 30, 1941

[In Pencil] Repld 8/2/41

C. T. Takahashi and Co.,

212 5th Ave. So.,

Seattle, Washington

Attention—Mr. C. T. Takahashi

Gentlemen,

We wish to acknowledge and thank you for your telegram of July 29th, and we have quoted on one of your three tanks on the basis of it costing us

Defendant's Exhibit No. A-11—(Continued)

We are very pleased to receive the information in the second part of your telegram that the freezing order of last week did not effect you in any way,

Hoping to be able to do business with you, we are,

Yours very truly,

**EQUIPMENT CORPORATION
OF AMERICA**

J. V. SULLIVAN

Jos. V. Sullivan

General Sales Manager

JVS:MH

Bought Service Rented Sold

(Cut)—E C A Rebuilt

Quotations Subject to Change Without Notice.
All the Above Equipment Is Offered Subject to
Prior Sale or Other Disposition.

All Agreements Are Contingent Upon Strikes,
Lockouts, Accidents, Delays of Carriers or Other
Delays Beyond Our Control.

[Endorsed]: Filed Oct 6, 1942.

[Endorsed]: No. 10415. United States Circuit Court of Appeals for the Ninth Circuit. Charles T. Takahashi and Edward Y. Osawa, Appellants, vs. United States of America, Appellee. Transcript of Record Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed September 16, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 10415

CHARLES T. TAKAHASHI and EDWARD Y.
OSAWA,

Appellants and Defendants,

vs.

UNITED STATES OF AMERICA,

Appellee and Plaintiff.

STATEMENT OF POINTS RELIED ON

To the Clerk of the Above Entitled Court and to the
Attorneys for the Appellee:

You, and each of you, will please take notice
that the appellants, and each of them, will rely
on the following points on their appeal herein:

(1) Denial of the separate petitions of appellants for the return of private papers forcibly taken from their persons, in violation of their rights under the Fourth and Fifth Amendments to the Constitution of the United States. The parts of the record deemed necessary for the consideration of this point are:

(a) Petitions for return of private papers, and other property, of each of appellants (Bill of Exceptions, pages 1 to 6);

(b) Affidavits of appellants in support of said petitions (Bill of Exceptions, pages 51 to 56);

(c) Affidavits in resistance of said petitions (Bill of Exceptions, pages 8 to 50);

(d) Orders denying each of said petitions (Bill of Exceptions, page 57).

(2) Denial of appellants' motion to quash indictment. This motion was predicated upon the ground that the private papers so taken from appellants had been submitted by the United States District Attorney to the grand jury and had become the basis for the indictment, without which the District Attorney could not successfully prosecute the same. The parts of the record deemed necessary for the consideration of this point are:

(a) Motion to quash indictment and supporting affidavit of George H. Crandell (Bill of Exceptions, pages 6 to 8);

(b) Affidavits of appellants in support of said motion (Bill of Exceptions, pages 51 to 57);

(c) Affidavits in resistance of said motion (Bill of Exceptions, pages 8 to 50);

(d) Order denying said motion (Bill of Exceptions, page 58).

(3) Admission in evidence, over appellants' objections of private papers and letters forcibly taken from their persons. Appellants contend that the use of such evidence by the Government in connection with their prosecution violated their rights under the Fourth and Fifth Amendments to the Constitution of the United States. The parts of the record deemed essential for the review of this point are:

(a) The parts of the record designated in connection with point (1) above;

(b) The entire narrative transcription of the evidence (Bill of Exceptions, page 58 to 151);

(c) Appellants' objections to the admission in evidence of private papers and letters forcibly taken from appellants' persons, the trial court's rulings and exceptions taken by appellants to such rulings (Bill of Exceptions, pages 58 to 151).

(4) Denial of motions made by the appellants, and each of them, to dismiss the indictment at the end of the Government's case, on the ground that the evidence was insufficient, as a matter of law, to sustain any count of the indictment, and the denial of their separate motions made at the close of all the evidence to dismiss and for direction of ver-

dicts of not guilty on each and every count of the indictment. The parts of the record deemed essential for the review of this point are:

(a) Indictment (Transcript, page 2);

(b) The entire narrative transcription of the evidence and the proceedings of the court, including motions which appellants interposed at the close of the Government's case and at the close of all the evidence, the rulings of the court on each of said motions and the exceptions taken to said rulings by the appellants (Bill of Exceptions, pages 58 to 151).

(5) The trial court's charge to the jury exceeded the bounds of fair comment and was highly prejudicial in that it was a biased, unfair and one-sided analysis of the evidence, and was argumentative. The parts of the record deemed essential for the consideration of this point are:

(a) The entire narrative transcription of the evidence (Bill of Exceptions, pages 58 to 151);

(b) That part of the charge wherein the court comments upon the evidence (Bill of Exceptions, commencing at page 177, line 15, and ending at page 184, line 7);

(c) The exceptions which the appellants, and each of them, took to that portion of the charge (Bill of Exceptions, page 185, line 16, to page 187, line 5).

(6) The instruction which the court gave the jury concerning the evidence of appellants' good

character and reputation was contrary to law, because it failed to tell the jury that if this evidence raised a reasonable doubt in their minds as to appellants' guilt they are entitled to the benefit of that doubt and the jury's verdict should, therefore, be not guilty. On the contrary, the instruction which the court gave, by direct statement, innuendo and suggestion, made good reputation of doubtful value and probably a positive disadvantage to appellants. The portions of the record essential for the consideration of this point are:

(a) The instruction which the court gave (Bill of Exceptions, page 184, line 21, to page 185, line 6);

(b) The exceptions which the appellants took to this instruction (Bill of Exceptions, page 186, line 18, to page 187, line 13);

(c) The supplemental instruction which the court gave concerning evidence of good character and reputation (Bill of Exceptions, page 187, lines 17 to 27 inclusive);

(d) Exceptions noted following the giving of said supplemental instruction (Bill of Exceptions, page 189, lines 15 to 20, inclusive).

SAMUEL B. BASSETT,

Attorney for Appellant,

Charles T. Takahashi.

TRACY E. GRIFFIN,

Attorney for Appellant, Edward Y. Osawa.

Received a copy of the within Statement of Points this 14th day of Sept., 1943.

J. CHARLES DENNIS,
Attorney for U. S.

[Endorsed]: Filed Sept. 17, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PORTIONS OF RECORD
TO BE PRINTED

Comes now the United States of America, appellee in the above entitled case, and designates the following portion of the record that it desires to be printed:

Instructions of the Court in full.

J. CHARLES DENNIS
Attorney for Appellee.

Comes now the appellant in the above entitled case, and designates the following portions of the Bill of Exceptions to be printed:

All exhibits admitted in evidence in the case.

TRACY E. GRIFFIN
SAMUEL B. BASSETT

Attorneys for Appellants.

[Endorsed]: Filed Nov 15 1943. Paul P. O'Brien, Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit.

CHARLES T. TAKAHASHI and EDWARD Y.
OSAWA,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington
Northern Division

FILED

NOV - 5 1943

PAUL P. O'BRIEN,
CLERK



No. 10415

United States
Circuit Court of Appeals
For the Ninth Circuit.

CHARLES T. TAKAHASHI and EDWARD Y.
OSAWA,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington
Northern Division



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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MR. TRACY E. GRIFFIN,

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1107 American Building
Seattle, Washington

MR. J. CHARLES DENNIS,

United States Attorney,
Attorney for Appellee,
1012 U. S. Court House,
Seattle, Washington [1*]

United States District Court Western District of
Washington Northern Division November
Term, 1941

No. 45646

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES T. TAKAHASHI, EDWARD Y.
OSAWA, M. IKUTA, KOH KOHNO, alias
Willie Chang, M. H. KIANG,

Defendants.

INDICTMENT

Vio. Section 88, Title 18, U. S. C. (Conspiracy to violate Paragraph 6 of the Executive Order approved by the President March 15, 1941, and effective April 15, 1941, pursuant to the provisions of Sec. 99, Title 50, U. S. C., and Sec. 80, Title 18, U. S. C.); Paragraph 6 of the Executive Order approved by the President March 15, 1941, and effective April 15, 1941, pursuant to the provisions of Section 99, Title 50, U. S. C.; Section 80, Title 18, U. S. C.

United States of America

Western District of Washington

Northern Division—ss:

The Grand Jurors of the United States of America being duly selected, impaneled, sworn and charged to inquire within and for the Northern

Division of the Western District of Washington,
upon their oaths present:

COUNT I.

That Charles T. Takahashi, Edward Y. Osawa, M. Ikuta, Koh Kohno alias Willie Chang, and M. H. Kiang, whose true and full names are to the grand jurors unknown, and each of them, heretofore and within one year prior to the 2nd day of November and continuing to and including the 2nd day of November in the year of our Lord one thousand nine hundred and forty-one, then and there being, at Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, at Washington in the District of Columbia, at Tokyo in Japan, at Shanghai in [2] China and divers other places to the grand jurors unknown, did then and there knowingly, wilfully, unlawfully and feloniously combine, conspire and confederate and agree together and with each other, and with divers other persons to the grand jurors unknown, to commit divers offenses against the United States, to-wit, violations of Paragraph 6 of the Executive Order, prescribing regulations, approved by the President March 15, 1941, effective April 15, 1941, providing as follows:

“6. The country designated on the application for license as the country of destination shall in each case be the country of ultimate destination. If the goods to be exported are consigned to one country with the knowledge that they are intended

for transshipment thence to another country, the latter country shall be named as the country of destination.”

pursuant to the provisions of Section 99, Title 50, U. S. C. in the following manner and particulars, it being then and there the plan, purpose and object of the said conspiracy and the object of the said persons so conspiring together as aforesaid, to knowingly, wilfully, unlawfully and feloniously export military equipment, munitions, component parts thereof, machinery, tools, materials and supplies necessary for the manufacture, servicing and operation thereof, prohibited by and curtailed by the Proclamation of the President of the United States, by virtue of Proclamations of the President dated July 2, 1940 and December 10, 1940, the Executive Order of the President of March 15, 1941, and Export Control Schedule No. 1 issued March 15, 1941, in that the object of said persons so conspiring together was to cause to be designated on an application for license for the export of three complete new steel dismantled storage tanks and accessories for erection purposes, a country as the country of designation, to-wit, China, other than the country of ultimate destination, to-wit, Japan, as they and each of them well [3] knew, and further, it being then and there the plan, purpose and object of the said conspiracy and the object of the said persons so conspiring together as aforesaid to violate the provisions of Section 80, Title 18, U.S.C., by knowingly, wilfully, unlawfully and feloniously making and *cause* to be made false and

fraudulent statements and representations in an application to export articles and materials (other than arms, ammunition, and implements of war and tin-plate scrap) designated by the President as necessary to the national defense pursuant to Section 6 of the Act of Congress approved July 2, 1940, then and there knowing said application contained false, fraudulent and fictitious representations and statements, being then and there a matter within the jurisdiction of a department and agency of the United States, to-wit, the Department of State, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the Grand Jurors upon their oath aforesaid, do further present that after the formation of the aforesaid conspiracy and in pursuance thereof and in order to effect the object of the aforesaid conspiracy and for the purpose of executing said unlawful conspiracy and agreement, the herein-after parties did certain overt acts, that is to say:

[4]

1.

That the defendants Charles T. Takahashi and Edward Y. Osawa on or about the month of December, 1940, at Seattle, Washington, ordered three complete new steel dismantled storage tanks and accessories for erection purposes.

2.

That on or about the months of November and December, 1940, the defendants Charles T. Taka-

hashi, Edward Y. Osawa, M. Ikuta and Koh Kohno at Seattle, Washington, and at Tokyo in Japan, agreed to furnish the Japanese army with three complete new steel dismantled storage tanks and accessories for erection purposes through Mikuni-Shoko Co., Ltd. of Tokyo, Japan

3.

That on or about the month of March, 1941, the defendant Edward Y. Osawa at Seattle, Washington departed on a vessel for Japan.

4.

That the defendant M. Ikuta of Mikuni-Shoko Co., Ltd. on or about June 27, 1941 at Tokyo in Japan sent a telegram in code addressed to C. T. Takahashi & Co., Seattle, under the individual proprietorship of Charles T. Takahashi.

5.

That on or about and between June 27, 1941 and November 2, 1941 at Seattle, Washington, the defendant Charles T. Takahashi received a confirmation of telegram from Mikuni-Shoko Co., Ltd., in code and translation, addressed to C. T. Takahashi & Co., Seattle, Washington, U.S.A.

6.

That the defendant M. Ikuta of Mikuni-Shoko Co., Ltd. on or about June 28, 1941, at Tokyo in Japan sent a telegram in code addressed to the defendant Charles T. Takahashi under [5] the code symbols N E W Y R, Seattle, Wash., U.S.A.

7.

That on or about and between June 28, 1941 and November 2, 1941, at Seattle, Washington, the defendant Charles T. Takahashi received a confirmation of telegram from Mikuni-Shoko Co., Ltd., in code and translation, addressed to N E W Y R.

8.

That on or about July 4, 1941, the defendant M. H. Kiang, as manager of Jua Hsin Company, at Shanghai in China, wrote a letter to China Import and Export Company, 212 5th Ave. So., Seattle, Washington, U.S.A.

9.

That the defendant M. Ikuta of Mikuni-Shoko Co., Ltd. on or about July 5, 1941, at Tokyo in Japan sent a telegram in code addressed to the defendant Charles T. Takahashi under the code symbols N E W Y R, Seattle, Wash., U.S.A.

10.

That on or about and between July 5, 1941 and November 2, 1941, at Seattle, Washington, the defendant Charles T. Takahashi received a confirmation of telegram from Mikuni-Shoko Co., Ltd., in code and translation, addressed to N E W Y R.

11.

That on or about July 5, 1941, the defendant Edward Y. Osawa at Tokyo wrote a letter addressed to the defendant Charles T. Takahashi at Seattle.

12.

That the defendant Charles T. Takahashi received a letter from Edward Y. Osawa, at Seattle, Washington, on or between the dates of July 5, 1941 and November 2, 1941. [6]

13.

That the defendant M. Ikuta of Mikuni-Shoko Co., Ltd. on or about July 8, 1941, at Tokyo in Japan sent a telegram in code addressed to the defendant Charles T. Takahashi under the code symbols N E W Y R, Seattle, Wash., U.S.A.

14.

That on or about and between July 8, 1941 and November 2, 1941, at Seattle, Washington, the defendant Charles T. Takahashi received a confirmation of telegram from Mikuni-Shoko Co., Ltd., in code and translation, addressed to N E W Y R.

15.

That the defendant Edward Y. Osawa on or about July 15, 1941, at Tokyo in Japan sent a letter to the defendant Charles T. Takahashi at Seattle, Washington.

16.

That the defendant Charles T. Takahashi received a letter from Edward Y. Osawa, at Seattle, Washington between the dates of July 15, 1941 and November 2, 1941.

17.

That the defendant M. Ikuta on or about July 16, 1941 at Tokyo in Japan, wrote a letter addressed to C. T. Takahashi Company, 212 5th Avenue South, Seattle, Wash., U.S.A.

18.

That the defendant Charles T. Takahashi at Seattle, Washington, between the dates of July 16, 1941 and November 2, 1941, received a letter from the defendant M. Ikuta of Mikuni Shoko Company Ltd., dated July 16, 1941.

19.

That on July 12, 1941, the defendant Edward Y. Osawa at Tokyo in Japan, wrote a letter to the defendant Charles T. Takahashi. [7]

20.

That the defendant Charles T. Takahashi at Seattle, Washington, between the dates of July 12, 1941 and November 2, 1941, received a letter from the defendant Edward Y. Osawa.

21.

That the defendant Charles T. Takahashi at Seattle, Washington, on or about July 16, 1941, prepared an application for license to export articles and materials (other than arms, ammunition and implements of war and tin-plate scrap) designated by the President as necessary to the national defense pursuant to Section 6 of the Act of Con-

gress approved July 2, 1940, a copy of said application for license is attached to this indictment marked Exhibit "A" and incorporated by this reference as a part of this overt act and this count as if fully set forth herein.

22.

That the defendant Edward Y. Osawa at Seattle, Washington, on or about November 2, 1941, had in his possession a letter from the defendant M. H. Kiang, as manager of Hua Hsin Company, Shanghai, China, dated July 4, 1941, addressed to Messrs. China Import and Export Company, 212 5th Ave. So., Seattle, Washington, U.S.A.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT II.

That Charles T. Takahashi, Edward Y. Osawa, M. Ikuta, Koh Kohno alias Willie Chang, and M. H. Kiang, whose true and full names are to the grand jurors unknown, and each of them, on or about the 16th day of July, 1941, in the [8] City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there knowingly, wilfully, unlawfully and feloniously violate the provisions of Paragraph 6 of the Executive Order, prescribing regulations,

approved by the President March 15, 1941, effective April 15, 1941, providing as follows; to-wit:

“6. The country designated on the application for license as the country of destination shall in each case be the country of ultimate destination. If the goods to be exported are consigned to one country with the knowledge that they are intended for transshipment thence to another country, the latter country shall be named as the country of destination.”

by virtue of Proclamations of the President dated July 2, 1940 and December 10, 1940, all pursuant to the provisions of Section 99, Title 50, U.S.C., in the following manner and particulars, to-wit, the aforesaid defendants and each of them in an application entitled:

“Application for license to export articles and materials (other than arms, ammunition, and implements of war and tin-plate scrap) designated by the President as necessary to the national defense pursuant to Section 6 of the Act of Congress approved July 2, 1940”

a copy of which said application is attached to this indictment marked Exhibit “A” and incorporated as a part of this count by this reference as if fully set forth herein, did designate on the application for license aforesaid for the export of three complete new steel dismantled storage tanks and accessories for erection purposes, a country as the country of designation, to-wit, China, other than the country of ultimate destination, to-wit, Japan,

as the defendants and each of them then and there well knew, contrary to the form of the statute and regulations in each such case made and provided, and against the peace and dignity of the United States of America. [9]

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT III.

That Charles T. Takahashi, Edward Y. Osawa, M. Ikutu, Koh Kohno alias Willie Chang, and M. H. Kiang, whose true and full names are to the grand jurors unknown, and each of them, on or about the 16th day of July, 1941, in the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there knowingly, wilfully, unlawfully and feloniously make and cause to be made false and fraudulent statements and representations in an application entitled:

“Application for license to export articles and materials (other than arms, ammunition, and implements of war and tin-plate scrap) designated by the President as necessary to the national defense pursuant to Section 6 of the Act of Congress approved July 2, 1940”

then and there knowing said application contained false, fraudulent and fictitious statements and representations being then and there in a matter within the jurisdiction of a department and agency of the

United States, to-wit, the Department of State, in the following manner and particulars, to-wit, the aforesaid defendants and each of them in an application entitled as aforesaid, a copy of which said application is attached to this indictment marked Exhibit "A" and incorporated as a part of this count by this reference as if fully set forth herein, did designate on the application for license aforesaid for the export of three complete new steel dismantled storage tanks and accessories for erection purposes, a country as the country of designation, to-wit, China, other than the country of ultimate destination, to-wit, Japan, as the defendants and each of them, then and [10] there well knew, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

(Signed) J. CHARLES DENNIS

United States Attorney

(Signed) GERALD SHUCKLIN

Assistant U. S. Attorney

[Endorsed]: A true bill, A. S. Nordquist, Foreman.

J. CHARLES DENNIS

Presented to the Court by the Foreman of the Grand Jury in open Court, in the presence of the Grand Jury, and Filed in the U. S. District Court Jan. 28, 1942

MILLARD P. THOMAS, Clerk

By J. MORTON ARNOLD, Deputy.

[11]

United States of America

Department of State

[Stamped]: Division of Control. Department of State. Jul 23, 4:30 p. m. '41.

[Stamped]: Division of Control. Department of State. Jul 22, 1941.

Application for license to export articles and materials (other than arms, ammunition, and implements of war and tin-plate scrap) designated by the President as necessary to the national defense pursuant to Section 6 of the Act of Congress approved July 2, 1940.

(Application to be made in duplicate)

DUPLICATE

.....

(Insert here name of country of destination)

License No.

(For official use only)

GENERAL INSTRUCTIONS

- (a) One duplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.

- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.
- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State,

or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

(1) Date of application July 16, 1941

(2) Applicant's reference No.....

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

(3) Name of applicant China Import & Export Company

By (Sgd) LEO NYE SING
(To be signed in ink)

(4) Consignee in foreign country

Name Hua Hsin Company

Address—Street 320 Szechuen Road

City Shanghai

Nationality—Chinese

State or Province.....

Country China

(5) Purchaser in foreign country

Name Hua Hsin Company

Address—Street 320 Szechun Road

City Shanghai

Nationality—Chinese

State or Province

Country China

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons	(7) Description of articles or materials to be exported	(8) Approximate net value
3	Complete New Steel Dismantled Storage Tanks and accessories for erection purposes	\$29,500.00 f.o.b. Seattle per tank
(each tank weighs about 270 long tons)		

APPLICATION REJECTED

Aug. 1, 1941 The Administrator of Export Control has determined that this proposed exportation would be contrary to the interest of the National Defense.

REJECTION NO. HT-26-R

(9) Source of material to be exported (see paragraph (e) above):

Graver Tank Company, (Name) East Chicago, Indiana (Address)

(10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:

Storage purposes

Hua Hsin Company, 320 Szechuen Road, Shanghai, China.

(11) License to be sent to

Name China Import & Export Company

Address: Street 212 Fifth Ave. So. City Seattle. State Washington.

- (12) Consignor in United States
Name China Import & Export Company. Nationality United States.
Address: Street 212 Fifth Ave. So. City, Seattle. State Washington.
- (13) Seller in United States
Name China Import & Export Company. Nationality United States.
Address: Street 212 Fifth Ave. So. City Seattle. State Washington.
Nature of business Importers & exporters.
- (14) Port of exit in the United States from which it is proposed to export the shipment Seattle, Wash.

License is hereby granted to the applicant mentioned herein to export from the United States of America to Shanghai, China the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

FOR COLLECTORS OF CUSTOMS AND
POSTMASTERS

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "COMPLETED"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Printer's Note: Ruled form here has no entries, consequently is not reproduced.]

Date of license.....

(For official use only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

For the Secretary of State:

By

(For official use only) [12]

District Court of the United States
Western District of Washington
Northern Division

No. 45646

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES T. TAKAHASHI,
EDWARD Y. OSAWA,

Defendants.

VERDICT

We, the jury in the above-entitled cause, find the Defendant, Charles T. Takahashi is guilty as charged in Count I of the Indictment filed herein; is guilty as charged in Count II of the Indictment filed herein; is guilty as charged in Count III of the Indictment filed herein; and we further find the defendant, Edward Y. Osawa is guilty as charged in Count I of the Indictment filed herein; is guilty as charged in Count II of the Indictment filed herein; is guilty as charged in Count III of the Indictment filed herein.

DOUG. F. MAWER

Foreman

[Endorsed]: Filed Oct. 7, 1942. [88]

In the District Court of the United States for the
Western District of Washington Northern Di-
vision.

No. 45646

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES T. TAKAHASHI, EDWARD Y.
OSAWA, et al.,

Defendants.

JUDGMENT AND SENTENCE

Comes now on this 19th day of April, 1943, the said defendant Charles T. Takahashi into open Court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says, save as he before hath said.

Wherefore, by reason of the law and the premises, and the verdict of the jury finding the defendant guilty on Counts I, II and III of the indictment, it is

Considered, Ordered and Adjudged by the Court that the defendant Charles T. Takahashi is guilty as charged in Counts I, II and III of the indictment, and that he be committed on Count I of the Indictment to the custody of the Attorney General of the United States for imprisonment in such peni-

tentiary, or in such other like institution, as the Attorney General of the United States or his authorized representative may by law designate, for the period of two (2) years. It is further

Considered, Ordered and Adjudged by the Court that the said defendant Charles T. Takahashi on Count II of the indictment be committed to the custody of the Attorney General of the United States for imprisonment in such [95] penitentiary, or in such other like institution, as the Attorney General of the United States or his authorized representative may by law designate for the period of two (2) years; Provided, however, that the execution of the sentence on said Count II shall run concurrently with and not consecutively to the execution of the sentence imposed on Count I of the Indictment. It is further

Considered, Ordered and Adjudged by the Court that the said defendant Charles T. Takahashi on Count III of the Indictment be committed to the custody of the Attorney General of the United States for imprisonment in such penitentiary, or in such other like institution, as the Attorney General of the United States or his authorized representative may by law designate for the period of five (5) years; Provided, however, that the execution of the sentence on said Count III shall run concurrently with and not consecutively to the execution of the sentence imposed on Counts I and II of the Indictment.

And the said defendant is hereby remanded into the custody of the United States Marshal for this

District for delivery to the Warden, Superintendent or Keeper of such penitentiary, or such other like institution, as the Attorney General of the United States or his authorized representative may by law designate, for the purpose of executing said sentence. This judgment and sentence for all purposes shall take the place of a commitment, and be recognized by the Warden, Superintendent or Keeper of any Federal Penal Institution as such.

Done in open Court this 19th day of April, 1943.

LLOYD L. BLACK

United States District Judge

Presented by:

J. CHARLES DENNIS

United States Attorney

Violation: 18 USCA 88

[Endorsed]: Filed April 19, 1943. [96]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision

No. 45646

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES T. TAKAHASHI, EDWARD Y.
OSAWA, et al.,

Defendants.

JUDGMENT AND SENTENCE

Comes now on this 19th day of April, 1943, the said defendant Edward Y. Osawa into open Court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says, save as he before hath said.

Wherefore, by reason of the law and the premises, and the verdict of the jury finding the defendant guilty on Counts I, II and III of the indictment, it is

Considered, Ordered and Adjudged by the Court that the defendant Edward Y. Osawa is guilty as charged in counts I, II and III of the indictment, and that he be committed on Count I of the indictment to the custody of the Attorney General of the United States for imprisonment in such peniten-

tiary, or in such other like institution, as the Attorney General of the United States or his authorized representative may by law designate, for the period of two (2) years. It is further

Considered, Ordered and Adjudged by the Court that the said defendant Edward Y. Osawa on Count II of the Indictment be committed to the custody of the Attorney General [97] of the United States for imprisonment in such penitentiary, or in such other like institution, as the Attorney General of the United States or his authorized representative may by law designate for the period of Two (2) Years; provided, however, that the execution of the sentence on said Count II shall run concurrently with and not consecutively to the execution of the sentence imposed on Count I of the indictment. It is further

Considered, Ordered and Adjudged by the Court that the said defendant Edward Y. Osawa on Count III of the Indictment be committed to the custody of the Attorney General of the United States for imprisonment in such penitentiary, or in such other like institution, as the Attorney General of the United States or his authorized representative may by law designate for the period of five (5) years; provided, however, that the execution of the sentence on said Count III shall run concurrently with and not consecutively to the execution of the sentence imposed on Counts I and II of the indictment.

And the said defendant is hereby remanded into the custody of the United States Marshal for this District for delivery to the Warden, Superintendent or Keeper of such penitentiary, or such other

like institution, as the Attorney General of the United States or his authorized representative may by law designate, for the purpose of executing said sentence. This judgment and sentence for all purposes shall take the place of a commitment, and be recognized by the Warden, Superintendent or Keeper of any Federal Penal Institution as such.

Done in open Court this 19th day of April, 1943.

LLOYD L. BLACK

United States District Judge.

Presented by:

J. CHARLES DENNIS,
United States Attorney

Violation: 18 USCA 88

[Endorsed]: Filed April 19, 1943 [98]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant:

Charles T. Takahashi
Hunt, Idaho (W. R. A.)

Name and Address of Appellant's Attorney:

Samuel B. Bassett
811 Alaska Building
Seattle, Washington

Offense:

Conspiracy to violate Title 50 U. S. C., Section 99 and Title 18 U. S. C., Section 80; and for

violation of Title 50, U. S. C., Section 99 and Title 18, U. S. C. Section 80.

Date of Judgment: April 19, 1943.

Brief Description of Judgment or Sentence: Committed to the Attorney General of the United States for imprisonment five years under conspiracy indictment and two years each for violation of Title 50 U. S. C., Section 99 and Title 18 U. S. C. Section 80; sentences to run concurrently and not consecutively.

Name of Prison Where Now Confined, if not on Bail: On bail.

I, the above named appellant hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below.

CHARLES T. TAKAHASHI

Appellant

Dated April 19, 1943.

Copy rec'd April 19, 1943.

J. CHARLES DENNIS

U. S. Atty. [99]

GROUNDS OF APPEAL

I.

That the Court erred in refusing to suppress certain documents and evidence taken forcibly from the person of the defendants, and each of them, or or about November 2nd, 1941.

II.

That the Court erred in refusing to return to the defendants their private papers and documents forcibly and wrongfully seized by agents of the Government on or about the 2nd day of November, 1941.

III.

That the court erred in refusing to quash the indictment on the defendants' motion.

IV.

That the Court erred in overruling defendants' demurrer to the indictment, and each count thereof.

V.

That the Court erred during the trial of said cause in receiving certain documentary evidence consisting of private papers wrongfully taken from the person of the defendants, and each of them, on or about November 2nd, 1941.

VI.

That the Court erred in the trial of said cause in his comments and instruction to the jury during the progress of said trial and at the close of all of the evidence.

VII.

That the Court commented during said instruction making an argument favorable to the plaintiff and unfavorable to this defendant,—did not review the evidence fairly or impartially, to all of which this defendant duly excepted. [100]

VIII.

That the Court improperly instructed the jury to the prejudice of this defendant by improperly refusing to give instructions requested by said defendant, to all of which this defendant duly excepted on each ground.

IX.

That the Court improperly instructed the jury at the close of all of the evidence to the prejudice of this defendant, to which said defendant duly excepted.

X.

That the Court erred in overruling this defendant on his motion for a directed verdict after a challenge to the sufficiency of the evidence at the close of plaintiff's case.

XI.

That the Court erred in failing to direct the jury to grant a verdict for this defendant upon this defendant's motion at the close of all of the evidence.

XII.

That the verdicts rendered and accepted by the Court were not supported by any evidence in the case and are contrary to the evidence.

XIII.

That there was no material basic evidence in said cause to warrant submitting the cause to the jury and said cause was erroneously submitted to the jury on surmise, suspicion, speculation, presumption and inference on inference only.

XIV.

That the Court erred in refusing to grant this defendant's motion for a mistrial during the progress of the cause, to which this defendant duly excepted. [101]

XV.

That the Court erred on the voir dire examination of the jury, in that the Court denied this defendant's challenge for cause to two jurors.

XVI.

That the Court erred in denying the motion of this defendant for new trial and in arrest of judgment.

XVII.

That the Court erred in resentencing this defendant after the original sentence was duly imposed.

[Endorsed]: Filed April 19, 1943. [102]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant:

Edward Y. Osawa,
Hunt, Idaho (W. R. A.)

Name and Address of Appellant's Attorney.

Tracy E. Griffin
1107 American Bldg.,
Seattle, Washington

Offense: Conspiracy to violate Title 50 U. S. C.,
Section 99 and Title 18 U. S. C., Section 80;

and for violation of Title 50, U. S. C., Section 99 and Title 18 U. S. C., Section 80.

Date of Judgment: April 19, 1943.

Brief Description of Judgment or Sentence: Committed to the Attorney General of the United States for imprisonment five years under conspiracy indictment and two years each for violation of Title 50 U. S. C., Section 99 and Title 18 U. S. C. Section 80; sentences to run concurrently and not consecutively.

Name of Prison Where Now Confined, If Not on Bail: On bail.

I, the above named appellant hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below.

EDWARD Y. OSAWA

Appellant

Dated April 19, 1943.

Copy rec'd April 19, 1943

J. CHARLES DENNIS

U. S. Atty. [103]

GROUND OF APPEAL

I.

That the court erred in refusing to suppress certain documents and evidence taken forcibly from the person of the defendants, and each of them, on or about November 2nd, 1941.

II.

That the Court erred in refusing to return to the defendants their private papers and documents forcibly and wrongfully seized by agents of the Government on or about the 2nd day of November, 1941.

III.

That the court erred in refusing to quash the indictment on the defendants' motion.

IV.

That the Court erred in overruling defendants' demurrer to the indictment, and each count thereof.

V.

That the Court erred during the trial of said cause in receiving certain documentary evidence consisting of private papers wrongfully taken from the person of the defendants, and each of them, on or about November 2nd, 1941.

VI.

That the Court erred in the trial of said cause in his comments and instruction to the jury during the progress of said trial and at the close of all of the evidence.

VII.

That the Court commented during said instruction making an argument favorable to the plaintiff and unfavorable to this defendant,—did not review the evidence fairly or impartially, to all of which this defendant duly excepted. [104]

VIII.

That the Court improperly intructed the jury to the prejudice of this defendant by improperly refusing to give instructions requested by said defendant, to all of which this defendant duly excepted on each ground.

IX.

That the Court improperly instructed the jury at the close of all the evidence to the prejudice of this defendant, to which said defendant duly excepted.

X.

That the Court erred in overruling this defendant on his motion for a directed verdict after a challenge to the sufficiency of the evidence at the close of plaintiff's case.

XI.

That the Court erred in failing to direct the jury to grant a verdict for this defendant upon this defendant's motion at the close of all of the evidence.

XII.

That the verdicts rendered and accepted by the Court were not supported by any evidence in the case and are contrary to the evidence.

XIII.

That there was no material basic evidence in said cause to warrant submitting the cause to the jury and said cause was erroneously submitted to the jury on surmise, suspicion, speculation, presumption and inference on inference only.

XIV.

That the Court erred in refusing to grant this defendant's motion for a mistrial during the progress of the cause, to which this defendant duly excepted. [105]

XV.

That the Court erred on the voir dire examination of the jury, in that the Court denied this defendant's challenge for cause to two jurors.

XVI.

That the Court erred in denying the motion of this defendant for new trial and in arrest of judgment.

XVII.

That the Court erred in resentencing this defendant after the original sentence was duly imposed.

[Endorsed): Filed April 19, 1943. [106]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON
APPEAL

I, Judson W. Shorett, Clerk of the United States District Court for the *Western of Washington*, do hereby certify that the foregoing typewritten transcript of record, consisting of pages numbered from 1 to 112, inclusive, is a full, true and complete copy of so much of the record, papers and

other proceedings in the above and foregoing entitled cause, as is required by amended stipulation re designation of contents of record on appeal filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the same constitute the record on appeal herein from the judgments of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that I transmit herewith as part of the record on appeal in this cause the original Bill of Exceptions and Assignments of Error filed in the cause.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellants for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

Clerk's fee's (Act of Feb 11, 1925) for making record, certificate or return,	
105 folios at 15c.....	15.75
164 folios at 5c.....	8.20
Appeal fee	10.00
Certificate of Clerk to Transcript50
Certificate of Clerk to Original Exhibits50
	<hr/>
Total	\$34.95

I hereby certify that the above amount has been paid to me by the attorneys for the appellants.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 9 day of September, 1943.

[Seal]

JUDSON W. SHORETT,
Clerk of the United States
District Court for the West-
ern District of Washington
By TRUMAN EGGER,
Chief Deputy

[Title of District Court and Cause.]

ASSIGNMENT OR ERRORS

The defendants, Charles T. Takahashi and Edward Y. Osawa, and each of them, hereby assign the following errors on appeal:

I.

The Court erred in denying the petition of Charles T. Takahashi for the return of private papers forcibly taken from his person, in violation of his rights under the Fourth and Fifth Amendments to the Constitution of the United States.

II.

The Court erred in denying the petition of Edward Y. Osawa for the return of private papers forcibly taken from his person, in violation of

his rights under the Fourth and Fifth Amendments to the Constitution of the United States.

III.

The Court erred in denying the motion of defendants, Charles T. Takahashi and Edward Y. Osawa, to quash the indictment herein.

IV.

The Court erred, during the trial of said cause, in refusing to suppress and in admitting in evidence private papers and letters forcibly taken from the person of the defendant, Charles T. Takahashi, on or about November 2, 1941, in violation of his rights under the Fourth and Fifth Amendments to the Constitution of the United States.

V.

The Court erred, during the trial of said cause, in refusing to suppress and in admitting in evidence private papers and letters forcibly taken from the person of the defendant, Edward Y. Osawa, on or about November 2, 1941, in violation of his rights under the Fourth and Fifth Amendments to the Constitution of the United States.

VI.

The Court erred in denying the motion made on behalf of the defendants, and each of them, to dismiss the indictment at the end of the Government's case, on the ground that the evidence was insufficient, as a matter of law, to sustain any count in the indictment.

VII.

The Court erred in denying the motion made by the defendants, and each of them, at the close of all the evidence to dismiss the indictment and for a direction of verdict of not guilty on each and every count of the indictment.

VIII.

The Court erred in instructing the jury, because the following portions of the charge exceeded the bounds of fair comment and was highly prejudicial in that it was a biased, unfair and one-sided analysis of the evidence and was argumentative:

“In this case it is my recollection that Mr. Osawa testified that while he was in Tokio, Japan, exhibit 9,—which he says he brought with him from Tokio, Japan, to Seattle on November 2nd—was handed to him by someone, from Mikuni-Shoko Company Limited of Tokio, Japan. He says that he received that letter, as I remember it. That letter recites from the beginning, quote,—it is addressed to “Messrs. China Import and Export Company. As a consequence of our long business discussion with your representative, Mr. W. L. Chang, we wish——”. Now, in the light of all of the evidence of this case, if you believe that Mr. Osawa honestly believed that Mr. W. L. Chang was the business representative of the China Import and Export Company; in the light of all of the evidence that you have heard, do you believe that Mr. Osawa believed the statement in the last of that letter that the tanks were imported for local storage purposes in Shanghai?

In connection with that letter and in connection with all of the evidence in the case, if Mr. Osawa believed that the letter of July 4, 1941, signed by Hua Hsin Company was an honest order for the shipment of these tanks to Shanghai, do you reasonably think that he would have written on July 15 to Mr. Takahashi to this effect: "We sure are on a spot on the three tanks. I doubt if a day goes by that they don't call us or say something about them. If we could only get those three tanks out it would be a life saver and they would do almost anything for us."

And you are entitled in the light of your experience and your common sense to determine if Mr. Osawa honestly believed that the Hua Hsin Company was purchasing these tanks, if he wouldn't have made a statement in this communication to Mr. Takahashi to the effect that he was not willing to approve the credit account of \$71,700 claimed in the Hua Hsin Company.

And you have a right in the light of all of the testimony to determine whether or not Mr. Osawa thought any portion of that letter of July 14, 1941, was an honest letter.

As I remember the testimony, Mr. Osawa testified that while this plaintiff's exhibit 9 was brought to him by someone from the Miconi Shoko Company, that he never saw either of the letters—I would like to find exhibit 17—dated July 16, 1941, addressed by Miconi Shoko Company Limited of Tokio, Japan, also to Seattle, Washington, but to the name Takahashi, instead of Chinese Import Company.

In the light of all of the evidence that you have heard in this case and of the exhibits, do you believe that if the Mikuni-Shoko Company would take to Mr. Osawa this exhibit 9, instead of mailing it to the China Import Company at Seattle, that they wouldn't also take to Mr. Osawa exhibits 17 and 18? If you read exhibits 17 and 18, as I know you will, it will be for you to determine whether or not those two letters do not show that it was the plan of the Mikuni-Shoko Company Limited or of Mr. Ikuta, its director, to merely use the Hua Hsin Company as a pretense.

It will be for you to determine if the Mikuni-Shoko Company wished Mr. Osawa to have the one letter, why they wouldn't want him to have the other two letters.

It is also for you to consider in the evidence—I would like to see the telegraph exhibits 10 to 13, inclusive—it is also for you to consider, in the light of all of the evidence, whether a business man of the experience of Mr. Takahashi, receiving these telegrams, under date of June 27 in code duo and private, under date of June 28th in code duo, and under date of July 5th under code duo, code inverted and under date of July 8, 1941, under code duo, without realizing what the purpose of Mikuni-Shoko Company was, as you find from the evidence in the light of exhibits 17 and 18.

Do you think it is reasonable that if a man with the experience of Mr. Takahashi, under date of June 27th, received a telegram from a company in Tokio, which included this language, "Do utmost

to arrange earliest possible shipment by every possible means oil tanks and tubes. Our customers desire additional oil tanks. Telegraph prospect." And if on or about the next date, by a telegram from the same Tokio Company, dated June 28, 1941, he was advised as follows: "Decided today name of firm is Hua Hsin Company, address 320 Szechuen Road, Shanghai, China," whether or not he would think that that was an honest sale to the Hua Hsin Company in Shanghai, China, or whether those telegrams would give any possible inference except that Mr. Takahashi was advised that the Mikuni-Shoko Company was telling him that they had decided to use the name of Hua Hsin Company?

In the light of your experience, do you think that if this was an honest sale that the Mikuni-Shoko Company would not have used the words, "Tanks have been sold to the Hua Hsin Company" instead of telegraphing Mr. Takahashi, "Decided today name of firm is Hua Hsin Company" and the other language set forth in this telegram?

My recollection of the evidence in this case is that Mr. Takahashi admitted that he had these four telegrams before he handed Mr. Leo Nye Sing the application of July 16, 1941. From the light of your experience and from the light of what Mr. Leo Nye Sing did in connection with this transaction with Hua Hsin Company, do you think that if Mr. Takahashi had deemed that that transaction was honest, that he would have agreed to pay three percent of any percent for someone to sign his name?

It is for you to determine in the light of your experience whether, if Mr. Takahashi was endeavoring to sell these three tanks other than in the Orient at time when he understood he would be unable to ship them to the Orient, if that were any different than anyone would do; whether they were honest or dishonest, if they were not able to have tanks shipped to the Orient, when they had been ordered from that location.

Under the evidence, as I remember it, the Mexico transaction, as far as the contract is concerned, involved used plates, used steel plates.

Under the evidence, as I remember it, the Mexico company executed an affidavit before a Mexican notary public and someone as a vice consul signed a certificate to the effect that such Mexican notary public was a notary public. It is for you to determine in the light of all of the evidence whether actually that affidavit was true.

That evidence has been introduced by the defendants upon the ground that it shows such good faith on the part of the defendants that they wouldn't be willing to violate any other law in the light of their action in that connection. You have a right in connection with the Mexican transaction to read and consider what Mr. Takahashi wrote as to the Mexican situation.

It is also for you to determine whether or not the Mexican transaction shows such good faith that anyone acting as Mr. Takahashi did would not violate any other law or whether it shows, or whether you may reasonably infer that it shows that when

the blacklisted firm was unable to receive any more steel plates, for whatever purpose it wished to receive them, that Mr. Takahashi cancelled the contract after it had been suspended by the Mexico Company.

In testing the evidence of the case, you have a right and should consider all of the statements and all of the exhibits 19, and 21 and 29, relative to these tanks. You have a right to determine whether the defendant Takahashi or the defendant Osawa was honest in stating the specific purpose of the article and the address of the ultimate consumer in a foreign country.

In the light of all of the evidence, do you believe that in exhibit 21, the application of July 16, 1941, that Mr. Takahashi believed that the specific purpose and the address of the ultimate consumer for storage purposes was Hua Hsin Company, Shanghai, China?

With respect to exhibit 19, the application of April 16, 1941, it is for you to determine whether or not it was honestly believed by Mr. Takahashi the purpose of the articles and the name of the ultimate consumer for storage purposes by Miconi Shoko Company. In that connection you may consider that in exhibit 20 signed by Mr. Leo Nye Sing it was stated that the consignee was [Illegible] Company, Mukden, China. And that the purpose was to be used on horse-drawn cooley wagons and carts. \$25,000, 50,000 pieces of automobile roller bearings.

The Kono and Company as the "ultimate con-

sumer to be sold to the trade as above explained". In the light of that statement that those articles were to be sold to the trade as above explained, it is for you to determine whether or not the defendant Takahashi was frank and open with the Government in not stating, instead of the purpose of the ultimate consumer being storage purposes by Miconi Shiko Company—for sale by Miconi Shoko Company to the Japanese Army or Navy."

At the trial of the defendants, and each of them, objected to the foregoing instructions on the following grounds and took the following exceptions:

Mr. Griffin (Counsel for defendant Osawa) excepted on the following grounds:

The Court then advised the jury, in effect, that he was permitted to comment upon the evidence, and the Court did comment upon the evidence, but the comment of the Court, to which the defendant Osawa excepts, was not unbiased, was not fair, was not met by the Court with any favorable comment of any kind in behalf of the defendant Osawa, but the comment was unfair, biased, prejudicial, without any endeavor at all to equalize the force of the comment, but made directly and with emphasis for the purpose of advising the jury that the Court, irrespective of what the Court said in the general instruction, that they should take nothing from it, to advise the jury that the Court desired a verdict of guilty in this case. Considering the comment made by the Court upon the evidence, an exception is taken to each and every comment made by the Court in that particular. I desire to point out that

having so commented, the defendants were entitled to have an equal fair comment in so far as their rights were concerned, to suggest to the Court this: While the Court by its comment has sought a conviction, because the defendants are charged with desiring to tranship three tanks, from Shanghai, China, to Japan, the jury were entitled to be told that they also should consider this—there is no evidence in the case that Japan required these three tanks in Japan. The evidence is that at the time in question Japan controlled not only the port of Shanghai but all the ports of China. The evidence is with that situation existing, the United States government denied the application, that the jury has an absolute right to infer, even if the shipments were direct to the Japanese Army, that those storage tanks might be and would be as useful in Shanghai, China, where its armies were employed, as it would be to ship them to Japan and transport oil from Japan, 1500 miles to Shanghai.

The Court: It is understood and the Court rules that each exception taken by Mr. Griffin on behalf of Mr. Osawa shall be deemed taken by Mr. Bassett in behalf of Mr. Takahashi.

Mr. Bassett (Counsel for defendant Takahashi): Thank you. In addition to what counsel has said in taking an exception to the Court's commenting on the evidence, I wish to add that the comments were not only biased and prejudicial and unfair, and one-sided, but they were argumentative as well.

The Court: I imagine that you would like all of the exceptions which Mr. Bassett has taken?

Mr. Griffin: Yes. I was just going to suggest that would round it out, then.

The Court: You may.

IX.

The Court erred in instructing the jury as follows, concerning evidence of defendants' good character and reputation:

“There has been evidence introduced in this case as to the good reputation,—that is, what people say as to the honesty or integrity of the defendants,—and you shall give such testimony that weight as you believe it entitled to receive in determining whether or not the defendants are guilty as charged. But the jury will recognize that many men have born good reputations, sometimes over many years, and have later been convicted of an offense which has existed for the same many years during which everyone thought they had a good reputation. And in this case, if you are convinced beyond a reasonable doubt that the defendants, or either of them, by the evidence, are guilty of the three counts or any of them, it is your duty and obligation to find said defendants or such one guilty, regardless of how good their reputation may have been”.

At the trial the defendants, and each of them, objected to the foregoing instruction on the following grounds and took the following exceptions:

Mr. Griffin (Counsel for defendant Osawa): The Court said further and, by his instructions, wiped

out all of the law of good reputation and honor, so far as the defendants are concerned, by his instruction that the jury could consider the reputation for what it is worth, but—as the jury knows, said the Court—people with good reputations are guilty and in this case so and so and so and so.

The Court: It is understood and the Court rules that each exception taken by Mr. Griffin on behalf of Mr. Osawa shall be deemed taken by Mr. Bassett in behalf of Mr. Takahashi.

Mr. Bassett: Thank you.

The Court: I am going to give some additional instructions, in the light of the exceptions you have taken, and if you wish, it may be understood you will have the right of exception to each one without the necessity of expressly taking them.

Whereupon the Court further instructed the jury concerning evidence of defendants' good character and reputation as follows:

“Members of the jury, supplementing the instructions on the law, that you must accept as the law, I wish to say this to you: In addition to what I have said with respect to the testimony in the case regarding the reputation of the defendants or either of them, the jury are instructed that if, in the light of all of the testimony and in the light of the reputation testimony, they believe the defendants or either of them are not guilty, they have a right to base that verdict upon their interpretation of the testimony, together with reputation testi-

mony, if in the jury's opinion such satisfies them that the defendants are not guilty."

The Court: Do you wish to note any exceptions—though I have in mind what has been said—do you wish to except to each and everything that I have said to the jury at this time?

Mr. Griffin: I so understood.

Mr. Bassett: Yes.

Mr. Crandell: Yes.

X.

The Court erred in overruling the motion of the defendants, Charles T. Takahashi and Edward Y. Osawa, for a new trial and in arrest of judgment, based upon the foregoing assignments of error.

XI.

The Court erred in entering judgment of conviction against the defendant, Charles T. Takahashi, and in sentencing him.

XII.

The Court erred in entering judgment of conviction against the defendant, Edward Y. Osawa, and in sentencing him.

By reason of the foregoing manifest errors the defendants, and each of them, pray that the judg-

ments of conviction be set aside and that they be discharged from custody.

TRACY E. GRIFFIN

SAMUEL B. BASSETT

Attorneys for Defendants,

Charles T. Takahashi and

Edward Y. Osawa.

Received a copy of the within Assignment of Errors this 13 day of Aug. 1943.

J. CHARLES DENNIS

Attorney for U. S.

[Endorsed]: Filed Aug. 13, 1943.

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

Be It Remembered that after return of the indictment herein, and a long time before trial, the defendant Charles T. Takahashi, on the 27th day of April, 1942, served and filed in the above entitled cause his duly verified petition for the return of certain private papers, books, money and other property forcibly taken by Federal agents from his person and from his office in violation of his rights under the Fourth and Fifth Amendments to the Constitution of the United States. Copy of said petition follows:

[Title of District Court and Cause.]

Comes now the defendant, Charles T. Takahashi, and respectfully represents to the Court:

I.

That at all of the times herein *alleged* he was and now is a citizen of the United States and a citizen and resident of the State of Washington and the City of Seattle.

II.

That on or about the 2nd day of November, 1941, certain officers of the United States Government, whose true names are to the petitioner unknown, without cause or reason therefor, in Seattle, Washington, restrained your petitioner, [1*] forcibly took from the person of your petitioner certain papers, including letters, telegrams, certificates, memoranda and money, without having a search warrant or without any authority in law, in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

III.

That upon demand for return of said papers, including letters, telegrams, certificates, memoranda and certain money, said officers returned to petitioner a certain certificate and the money so unlawfully seized, but refused and still refuse to return to petitioner said letters, telegrams, papers and memoranda. That the said letters, telegrams, papers and memoranda consist of the following, to-wit:

*Page numbering appearing at foot of page of original Bill of Exceptions.

1. Telegram in code transmitted by M. Ikuta of Mikuni-Shoko Co., Ltd., on or about June 27, 1941 at Tokyo in Japan, addressed to C. T. Takahashi & Co., Seattle, Washington, being the property of C. T. Takahashi.

2. A letter dated July 5, 1941, addressed to Edward Y. Osawa at Tokyo, Japan, and addressed to your petitioner.

3. Letter from Mikuni-Shoko Co., Ltd., in confirmation of telegram, addressed to N E W Y R..

4. Letter written by Edward Y. Osawa, dated July 15, 1941, at Tokyo, Japan, sent to Charles T. Takahashi, petitioner.

5. Letter dated July 16, 1941, written by M. Ikuta, Tokyo, Japan, written to C. T. Takahashi & Co.

6. Letter dated July 12, 1941, written by Edward Y. Osawa, Tokyo, Japan, and addressed to petitioner, C. T. Takahashi.

IV.

That there is now overdue an income tax report to the [2] Federal Government for petitioner's income for 1941, but that the plaintiff above named, by its officers, have possession of all of the records and books of petitioner, and have in their possession all of his funds and money, and petitioner has no record or means of compiling his income report, which under the laws of the United States will constitute a penalty.

V.

That all of said papers are the personal property of your petitioner. That in violation of the Fourth and Fifth Amendments to the Constitution of the United States, and in violation of petitioner's rights, the said papers, letters and telegrams so unlawfully possessed by the said representatives *if* the Government, were delivered to the United States Attorney for the above entitled district, and by said United States Attorney wrongfully and unlawfully presented to the Grand Jury and used.

VI.

That to wit, on or about the 3rd day of November, 1941, and thereafter up to and including December 7, 1942, certain officers of the United States Government, whose names are unknown to petitioner, but are known to the above named plaintiff, wrongfully and unlawfully, and without search warrant, and without authority therefor, took possession of and searched petitioner's office at 212 5th Avenue South, Seattle, Washington, and wrongfully and unlawfully, and in violation of the Constitution of the United States and especially of the Fourth and Fifth Amendments thereof, took possession of the papers, documents, books, records, and all of the property belonging to petitioner in said office. [3]

VII.

That on said 3rd day of November, 1941, without authority therefor, said officers of the United States Government, whose names are unknown to the peti-

tioner, but known to the plaintiff in the above entitled action, took possession of the plaintiff's property, consisting of apartment houses, places of business, and together with certain cash on deposit in the National Bank of Commerce, the property of petitioner, and continue to hold said property in violation of petitioner's rights, and that said officers and the Deputy United States District Attorney purposes to use said letters, books, records, telegrams, papers and documents at the trial of the above entitled cause, and by reason thereof and the facts set forth above, petitioner's rights guaranteed under the said Fourth and Fifth Amendments to the Constitution of the United States have been and will be violated unless the court order the return of said property.

Wherefore, petitioner prays that said District Attorney, and said Government officials be required to forthwith return all of said property, including said letters, telegrams, papers, documents, books, records and money to the said defendant, and your petitioner will ever pray.

C. T. TAKAHASHI

Petitioner

SAMUEL B. BASSETT

GEO. H. CRANDELL

Attorneys for Petitioner

(Verification)

On the same day, April 27, 1942, the defendant Edward Y. Osawa served and filed a similar petition

for the return of a certain briefcase and certain private papers forcibly taken by Federal agents from his person, in violation of his rights under the Fourth and Fifth Amendments to the Constitution of the [4] United States. A copy of said petition follows:

[Title of District Court and Cause.]

Comes now the defendant, Edward Y. Osawa, and respectfully represents to the court:

I.

That at all of the times herein alleged he was and now is a citizen of the United States and a citizen and resident of the State of Washington and the City of Seattle.

II.

That on or about the 2nd day of November, 1941, certain officers of the United States Government, whose true names are to petitioner unknown, without cause or reason therefor, in Seattle, Washington, restrained your petitioner, forcibly took from the person of your petitioner one brief case and papers, without having a search warrant, or without any authority in law, in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

III.

That upon demand for the return of said papers and brief case said officers refused and still refuse to return to petitioner said papers and brief case.

IV.

That all of said papers and said brief case are the personal property of your petitioner. That in violation of the Fourth and Fifth Amendments to the Constitution of the United States, and in violation of petitioner's rights, said papers and brief case so unlawfully possessed by the said representatives of the Government, were delivered to the United States Attorney for the above entitled district, and by said United States Attorney wrongfully and unlawfully presented to the Grand Jury and used. [5]

Wherefore, petitioner prays that said District Attorney, and said Government officials be required to forthwith return said papers and brief case to petitioner, and your petitioner will ever pray.

EDWARD Y. OSAWA

Petitioner

SAMUEL B. BASSETT

GEO. H. CRANDELL

Attorneys for Petitioner.

(Verification)

And on the same day, April 27, 1942, both of said defendants joined in a motion to quash the indictment herein upon the ground and for the reason that the private papers and property so taken had been submitted by the United States District Attorney to the Grand Jury and had become the basis for the indictment. A copy of said motion follows:

[Title of District Court and Cause.]

Come now the above named defendants, Charles T. Takahashi and Edward Y. Osawa, and move the court on the files and records herein, and on the affidavit of Geo. H. Crandell hereto attached, and the petitions of the defendants, for an order quashing the indictment herein, and both counts thereof, upon the ground and for the reason that the United States District Attorney and his assistants, submitted to the Grand Jury which returned said indictment a large number of records, memoranda, letters, telegrams unlawfully seized from the person of Charles T. Takahashi and Edward Y. Osawa, and from the office of Charles T. Takahashi, and that the evidence so obtained and submitted to the Grand Jury, as aforesaid, became the basis for the indictment herein, and both counts thereof, without which the United States District Attorney cannot successfully prosecute the same. That all of said matters have been done in [6] violation of the defendants' rights under the Fourth and Fifth Amendments to the Constitution of the United States; and that the Government ought not to be subjected to further discredit and expense, nor the defendants subjected to further expense, vexation and contumely by the prosecution of a bill of indictment so founded.

SAMUEL B. BASSETT

GEO. H. CRANDELL

Attorneys for Defendant

This motion to quash was supported by affidavit as follows:

[Title of District Court and Cause.]

United States of America

Western District of Washington

Northern Division—ss.

Geo. H. Crandell, being first duly sworn on oath deposes and says: That he is one of the attorneys for the defendants, Charles T. Takahashi and Edward Y. Osawa, and makes this affidavit in support of a motion to quash the indictment herein. Affiant says that on to wit, the 2nd day of November, 1941, in the City of Seattle, that certain officers of the Treasury Department of the United States known to the plaintiff and unknown to said defendants, wrongfully and unlawfully arrested and restrained the defendants, Charles T. Takahashi and Edward Y. Osawa, and each of them, and while so restrained and under arrest, wrongfully and unlawfully took from said defendants certain papers and documents, which said papers and documents were used by the United States Attorney before the Grand Jury, and by the use of which the indictment herein was returned. That thereafter, without authority, on to wit, the 3rd day of November, 1941, the said officers of the Treasury Department of the United States, whose true names are known to the plaintiff but unknown to the defendant, unlawfully [7] and without authority, took possession of the offices of the defendant, Charles T. Takahashi, searched the same and unlawfully procured papers, documents and records in violation of the Fourth and Fifth Amendments to the Constitution of the United States and

the rights of the defendants herein. That said documents and papers were used by the United States Attorney and his assistants to procure the indictment herein.

GEO. H. CRANDELL

Subscribed and sworn to before me this 27th day of April, 1942.

KENNETH DURHAM

Notary Public in and for the State of Washington,
residing at Seattle

In resistance to these petitions for return of private papers and motion to quash the plaintiff, on the 2nd day of May, 1942, served and filed six affidavits (stapled together and filed as one document), the same being the affidavits of A. S. Atherton, A. D. Richards, J. W. Stanton, A. J. Frankel, A. H. Koons and Roy L. Ballinger. The affidavit of A. S. Atherton reads as follows:

[Title of District Court and Cause.]

United States of America
Western District of Wash.
Northern Division—ss.

A. S. Atherton, being first duly sworn, on oath deposes and says:

That he is a United States Customs Agent stationed at Seattle, Washington, and was such officer at all times during the year 1941 and at all times since;

That on or about October 15, 1941, he received an instruction from the Bureau of Customs to investi-

gate C. T. [8] Takahashi as a suspected violator of the Foreign Funds Control Act; .

That together with Customs Agent A. D. Richards he commenced this investigation in the latter part of the month of October, 1941;

That on November 2, 1941, he was at the Great Northern Dock in Seattle, Western District of Washington, Northern Division, and at that time the Japanese M/S Hikawa Maru was there, having arrived at that place from Japan that date;

That he saw Edward Y. Osawa, who had just arrived from Japan on that vessel, in the Customs baggage enclosure on that dock;

That he did not know Osawa but the latter was pointed out to him by another officer who described him as C. T. Takahashi's manager;

That he then saw another man talking to Osawa in the Customs baggage enclosure who was pointed out to him by another officer as C. T. Takahashi;

That he knew by reference to the passenger list of the above-named vessel, that C. T. Takahashi was not a passenger arriving thereon, and, by his knowledge of the rule that only arriving passengers were allowed in the Customs enclosure, that C. T. Takahashi had no right to be therein;

That he saw Edward Y. Osawa holding a paper in his hand, but could not see, owing to the piles of baggage and the crowd of people moving about, whether C. T. Takahashi gave the paper to Edward Y. Osawa;

That Customs Agent A. D. Richards showed him a letter with the statement that he had, that date, received the [9] letter from the hands of Chief Customs Inspector A. H. Koons, and this letter, a photostat of which, marked "Exhibit A", is attached to this affidavit and made a part thereof, was in an envelope addressed, "Miss Chisato Koitabashi, c/o Mr. Ed Osawa", and noted from a reading of the letter, which was dated October 19, 1941, that the writer thereof was sending merchandise to the addressee through Ed Osawa and appeared to express a fear of detection although chancing the outcome of the effort to send merchandise into the United States past the Customs, and describing the merchandise and stating its value;

That this circumstance, together with that of a close contact of Edward Y. Osawa by C. T. Takahashi, and the fact that the said Takahashi had been ascertained not to have been a passenger arriving on that ship, led to the belief that a plan was afoot in his presence to violate the laws of the United States and that C. T. Takahashi was as liable to suspicion in connection therewith as was Edward Y. Osawa who was specially named;

That upon ascertaining that Edward Y. Osawa desired that this baggage be removed to the United States Appraiser's Store for examination at a later date, he observed Osawa and C. T. Takahashi together start to leave the Customs baggage enclosure, at which time, with Customs Agent A. D. Richards, he introduced himself to Osawa and Takahashi as a United States Customs Agent, exhibited to them the

badge of such agent, and directed them to enter the adjoining waiting room for search;

That with Customs Agent Richards he searched Edward Y. Osawa in the wash room adjoining the waiting room, and took from him a brief case containing various papers, including one letter on the letterhead of the Hua Hsin Company, dated at Shanghai, July 4, 1941, addressed to the China Import and Export Company, 212 Fifth Avenue South, Seattle, Washington and signed for the Hua Hsin Company by M. H. Kiang, manager;

That said letter contained a reference to the sum of \$71,700.00, described therein as a deduction to be made by the China Import and Export Company from the Hua Hsin Company's credit account, and knowing that the China Import and Export Company was but another name for C. T. Takahashi, whom he had under investigation as a suspected violator of the Foreign Funds Control Act, he took and held that letter from Takahashi's employee, Edward Y. Osawa, as an instrumentality of the crime of violating the Foreign Funds Control Act, and held the other papers as having a bearing on and contributing to the transaction described in the above-mentioned Hua Hsin letter.

That he then, together with Customs Agent A. D. Richards, searched the person of C. T. Takahashi in the washroom adjoining the waiting room on the Great Northern Dock, and removed from his person:

1. Telegram in code transmitted by Mikuni-Shoko Company, Ltd., on or about June 27, 1941, at

Tokyo, Japan, addressed to C. T. Takahashi and Company, Seattle, Washington.

2. Letter dated July 5, 1941, addressed by Edward Y. Osawa, at Tokyo, Japan, to C. T. Takahashi.

3. Letter from Mikuni-Shoko Company, Ltd., in confirmation of telegram addressed to NEWYR.

4. Letter written by Edward Y. Osawa, dated July 15, 1931, at Tokyo, Japan, and sent to Charles T. Takahashi. [11]

5. A letter dated July 16, 1941, written by M. Ikuta, Tokyo, Japan, to C. T. Takahashi and Company.

6. Letter dated July 12, 1941, written by Edward Y. Osawa, Tokyo, Japan, and addressed to C. T. Takahashi. together with other papers, all of which related to the matter of steel storage tanks to be shipped to the Hua Hsin Company, and the payment for which was the \$71,700.00 under investigation as foreign funds of China or Japan and Nationals thereof;

In addition he took from C. T. Takahashi U. S. Customs pass or permit No. 1075 which permitted C. T. Takahashi to board vessels, after Customs boarding, but specifically denied him entrance to the Customs enclosure;

That on November 3, 1941, at 212 Fifth Avenue So., Seattle Washington, which is the place of business of C. T. Takahashi, and of the China Import and Export Company, he received from C. T. Takahashi several rejected applications for licenses to

export articles and materials designated by the President as necessary to the national defense pursuant to Section 6 of the Act of Congress approved July 2, 1940;

That these rejected applications were freely offered by C. T. Takahashi with the consent of his attorney at law who was then and there present and not by reason of any search, seizure or unlawful action;

That neither on November 3, 1941, December 7, 1941, nor at any other time did he take possession of the property of C. T. Takahashi consisting of apartment houses, places of business, cash bank deposits or anything else.

A. S. ATHERTON

Subscribed and sworn to before me this 1 day of May, 1942, [12] at Seattle, Washington

E. M. ROSSER

Deputy Clerk, United States
District Court, Western District
of Washington

Attached to said affidavit and made a part thereof was a photostat copy of a letter, marked "Exhibit A", and shown following: [13]



EXHIBIT

A

Miss Christ Knitwear

% Mr. E. O'Connor

M. Knit

Dear friend,

Am sending you 10 O'Connor pairs of knit stockings I hope they will pass the customs. Perhaps they will be taken over anyway I am taking this chance. You will find that they almost look like Nylon. ^{but they are pure silk} In fact Shown has made these Nylon-silk and they cost \$3.30 a pair so I hope you won't wear them recklessly.

There aren't so many habutae scarves now-a-days. The ones they have are so ^{poor} (Kudon) and the color combinations are simply atrocious. This one I'm sending isn't as pretty but it's the only one I found that I thought you would like.

Sincerely,
Mary.

(11)



The affidavit of A. S. Richards reads as follows:

[Title of District Court and Cause.]

United States of America

Western District of Wash.

Northern Division—ss.

A. D. Richards, being first duly sworn, on oath deposes and says:

That he is a Chief Warrant Officer in the United States Coast Guard stationed at Portland, Oregon. Further that from October 1, 1941, to April 14, 1942, that he was a United States Customs Agent stationed at Seattle, Washington;

That on or about October 15, 1941, he received an instruction from the Bureau of Customs to investigate C. T. Takahashi as a suspected violator of the Foreign Funds Control Act;

That together with Customs Agent A. S. Atherton he commenced this investigation in the latter part of the month of October, 1941;

That on November 2, 1941, he was at the Great Northern Dock in Seattle, Western District of Washington, Northern Division, and at that time the Japanese M/S Hikawa Maru was there, having arrived at that place from Japan that date:

That he saw Edward Y. Osawa, who had just arrived from Japan on that vessel, in the Customs baggage enclosure on that dock;

That he did not know Osawa but the latter was pointed out to him by another who described him as C. T. Takahashi's manager;

That he then saw another man talking to Osawa in the Customs baggage enclosure who was pointed out to him by [15] another officer as C. T. Takahashi;

That he knew, by reference to the passenger list of the above-named vessel, that C. T. Takahashi was not a passenger arriving thereon, and, by his knowledge of the rule that only arriving passengers were allowed in the Customs enclosure, that C. T. Takahashi had no right to be therein;

That he saw Edward Y. Osawa and C. T. Takahashi exchanging papers during their conversation at a point on the pier where Edward Y. Osawa's baggage was placed;

That he was too far away at that time to be able to identify just what papers had been exchanged between Osawa and Takahashi;

That Chief Customs Inspector A. H. Koons had given him a letter with a statement that he had this date received this letter from a Customs Inspector, and this letter, a photostat of which, marked "Exhibit A", is attached to this affidavit and made a part thereof, was in an envelope addressed, "Miss Chisato Koitabashi, c/o Mr. Ed Osawa", and noted from a reading of the letter, which was dated October 19, 1941, that the writer thereof was sending merchandise to the addressee through Ed Osawa and appeared to express a fear of detection although chancing the outcome of the effort to send merchandise into the United States past the Customs, and describing the merchandise and stating its value;

That this circumstance, together with that of the close contact of Edward Y. Osawa by C. T. Takahashi, and the fact that the said Takahashi had been ascertained not to have been a passenger arriving on that ship, led to the belief that a plan was afoot in his presence to violate the laws [16] of the United States and that C. T. Takahashi was as liable to suspicion in connection therewith as was Edward Y. Osawa who was specially named;

That upon ascertaining that Edward Y. Osawa desired that his baggage be removed to the United States Appraiser's Store for examination at a later date, he observed Osawa and C. T. Takahashi together start to leave the Customs baggage enclosure, at which time, with Customs Agent A. S. Atherton, he introduced himself to Osawa and Takahashi as a United States Customs Agent, exhibited to them the badge of such agent, and directed them to enter the adjoining waiting room for search;

That with Customs Agent Atherton he searched Edward Y. Osawa in the wash room adjoining the waiting room, and took from him a brief case containing various papers, including one letter on the letter-head of the Hua Hsin Company, dated at Shanghai, July 4, 1941, addressed to the China Import and Export Company, 212 Fifth Avenue South, Seattle, Washington, and signed for the Hua Hsin Company by M. H. Kiang, manager;

That said letter contained a reference to the sum of \$71,700.00, described therein as a deduction to be made by the China Import and Export Company

from the Hua Hsin Company's credit account, and knowing that the China Import and Export Company was but another name for C. T. Takahashi, whom he had under investigation as a suspected violator of the Foreign Funds Control Act, he took and held that letter from Takahashi's employee, Edward Y. Osawa, as an instrumentality of the crime of violating the Foreign Funds Control Act, and held the other papers as having a bearing on and contributing to the transaction described [17] in the above-mentioned Hua Hsin letter.

That he then, together with Customs Agent A. S. Atherton, searched the person of C. T. Takahashi in the wash room adjoining the waiting room on the Great Northern Dock, and removed from his person:

1. Telegram in code transmitted by Mikuni-Shoko Company, Ltd., on or about June 27, 1941, at Tokyo, Japan, addressed to C. T. Takahashi and Company, Seattle, Washington.

2. Letter dated July 5, 1941, addressed by Edward Y. Osawa, at Tokyo, Japan, to C. T. Takahashi.

3. Letter from Mikuni-Shoko Company, Ltd., in confirmation of telegram addressed to NEWYR.

4. Letter written by Edward Y. Osawa, dated July 15, 1941, at Tokyo, Japan, and sent to Charles T. Takahashi.

5. A letter dated July 16, 1941, written by M. Ikuta, Tokyo, Japan, to C. T. Takahashi and Company.

6. Letter dated July 12, 1941, written by Edward Y. Osawa, Tokyo, Japan, and addressed to C. T.

Takahashi, together with other papers, all of which related to the matter of steel storage tanks to be shipped to the Hua Hsin Company, and the payment for which was the \$71,700.00 under investigation as foreign funds of China or Japan and Nationals thereof;

In addition he took from C. T. Takahashi U. S. Customs pass or permit No. 1075 which permitted C. T. Takahashi to board vessels, after Customs boarding, but specifically denied him entrance to the Customs enclosure;

That on November 3, 1941, at 212 Fifth Avenue So., Seattle, Washington, which is the place of business of C. T. Takahashi, and of the China Import and Export Company, [18] he received from C. T. Takahashi several rejected applications for licenses to export articles and materials designated by the President as necessary to the national defense pursuant to Section 6 of the Act of Congress approved July 2, 1940;

That these rejected applications were freely offered by C. T. Takahashi with the consent of his attorney at law who was then and there present and not by reason of any search, seizure or unlawful action;

That neither on November 3, 1941, December 7, 1941, nor at any other time did he take possession of the property of C. T. Takahashi consisting of apartment houses, places of business, cash bank deposits or anything else.

A. D. RICHARDS

Subscribed and sworn to before me this 2nd day of May, 1942, at Seattle, Washington.

E. R. ROSSER

Deputy Clerk, United States
District Court, Western Dis-
trict of Washington.

Attached to said affidavit of A. D. Richards was a similar photostat copy of the same letter attached to the affidavit of A. S. Atherton, but to avoid repetition is omitted here.

The affidavit of J. W. Stanton reads as follows:

[Title of District Court and Cause.]

United States of America
Western District of Texas
El Paso Division—ss.

J. W. Stanton, being first duly sworn, on oath deposes and says: That he is an Inspector in the Bureau of Entomology and Plant Quarantine and was such officer on November 2, 1941, on which date he was stationed at Seattle, Western District of Washington, Northern Division;

That on November 2, 1941, pursuant to his official [19] duties as such Inspector, he went on board the Japanese M/S Hikawa Maru at the Great Northern Dock, Seattle, Washington, which vessel had arrived there that date from Japan;

That his duties on board that vessel consisted of inspecting the ship for plants and fruits from Japan, and insect life that might be present therein or thereon;

That to fully perform this duty it was necessary to search staterooms and receptacles, including wastebaskets, therein;

That in one stateroom on board that vessel, that date, he found in a wastebasket therein a letter in an opened envelope addressed "Miss Chisato Koitabashi, C/o Mr. Ed. Osawa";

That upon reading this discarded letter, which was dated Oct. 19, 1941, and noting that the writer thereof stated that certain merchandise was being sent to the addressee through one Ed Osawa and also the intimation or apprehension that the merchandise referred to might be taken from the bearer by the Customs, and it appearing to him that the information in the letter disclosed a plan to smuggle merchandise into the United States, he delivered the said letter and its envelope to Customs Inspector A. J. Frankel that date;

That the attached photostat, marked "Exhibit A", is a true picture of the letter and envelope therein described.

J. W. STANTON

Subscribed and sworn to before me this 29th day of April, 1942, at El Paso, Texas.

MAXEY HART

Clerk, United States District
Court, Western District of
Texas

By FLORA L. LINKER,

Deputy Clerk [20]

Attached to said affidavit of J. W. Stanton was a similar photostat copy of the same letter attached to the affidavit of A. S. Atherton, but to avoid repetition is omitted here.

The affidavit of A. J. Frankel reads as follows:

[Title of District Court and Cause.]

United States of America

Western District of Washington—ss.

A. J. Frankel, being first duly sworn, on oath deposes and says: That he is an Inspector of Customs stationed at Seattle, Washington, and was such officer on November 2, 1941, on which date he was at the Japanese M/S Hikawa Maru which was moored at the Great Northern Dock at Seattle, Western District of Washington, Northern Division.

That he then and there received from J. W. Stanton, an Inspector in the Bureau of Entomology and Plant Quarantine, a letter in an envelope addressed, "Miss Chisato Koitabashi, c/o Mr. Ed Osawa".

That upon reading this letter, which was dated October 19, 1941, and noting that the writer thereof stated that certain merchandise was being sent to the address through one Ed Osawa and also the intimation or apprehension that the merchandise referred to might be taken from the bearer by the Customs, and it appearing to him that the information in the letter disclosed a plan to smuggle merchandise into the United States, he delivered

the said letter and its envelope to Chief Inspector of Customs A. H. Koons that date.

That the attached photostat, marked "Exhibit A", truly depicts the letter and envelope herein described.

A. J. FRANKEL

Subscribed and sworn to before me this 29th day of April, [21] 1942, at Seattle, Washington.

E. M. ROSSER

Deputy Clerk, United States
District Court, Western Dis-
trict of Washington

Attached to said affidavit of A. J. Frankel was a similar photostat copy of the same letter attached to the affidavit of A. S. Atherton, but to avoid repetition is omitted here.

The affidavit of A. H. Koons reads as follows:

[Title of District Court and Cause.]

United States of America

Western District of Washington—ss.

Northern Division

A. H. Koons, being first duly sworn, on oath deposes and says:

That he is Chief Inspector of Customs stationed at Seattle, Washington, and was such officer on November 2, 1941, on which date he was at the Japanese M/S Hikawa Maru which was moored at the Great Northern Dock at Seattle, Washington, Western District of Washington, Northern Division.

That he then and there received from Inspector

of Customs A. J. Frankel, a letter in an envelope addressed, "Miss Chisato Koitabashi, c/o Mr. Ed Osawa".

That upon reading this letter, which was dated October 19, 1941, and noting that the writer thereof stated that certain merchandise was being sent to the addressee through one Ed Osawa and also the intimation or apprehension that the merchandise referred to might be taken from the bearer by the Customs, and it appearing to him that the information in the letter disclosed a plan to smuggle merchandise into the United States, he delivered the said letter and its envelope to Customs Agent A. D. Richards that date.

That the attached photostat, marked "Exhibit A", truly [22] depicts the letter and envelope herein described.

A. H. KOONS

Subscribed and sworn to before me this 28th day of April, 1942, at Seattle, Washington

TRUMAN EGGER

Deputy Clerk, United States
District Court, Western District
of Washington.

Attached to said affidavit of A. H. Koons was a similar photostat copy of the same letter attached to the affidavit of A. S. Atherton, but to avoid repetition is omitted here.

The affidavit of Roy L. Ballinger reads as follows:

[Title of District Court and Cause.]

United States of America

Western District of Wash.—ss.

Northern Division

Roy L. Ballinger, being first duly sworn, on oath deposes and says:

That he is Assistant Collector of United States Customs at Seattle, Washington, and was such officer on July 1, 1940, and at all times *inse*;

That on July 1, 1940, he issued, on Customs Form 3127, Permit to Enter Customs Lines, No. 1075, to C. T. Takahashi to be in effect for a period of six months;

That this period was later extended to June 30, 1941, and again extended to December 31, 1941;

That a carbon copy of this permit, No. 1075, has been and is now on file in the office of the Collector of Customs at Seattle, Washington;

That the authority for the issuance of this permit is contained in Art. 106(k), Customs Regulations of 1937;

That this permit was limited to boarding vessels after Customs boarding formalities had been concluded, and specifically denied the holder permission to enter the Customs [23] enclosure;

That Customs enclosures are areas on piers and docks designated as areas for the examination of persons and their effects when such persons and effects are landed from a vessel arriving from a foreign port or place;

That such Customs enclosure had been designated on the Great Northern Dock at Seattle, November

2, 1941, and the entrances there to and exists therefrom were guarded by Customs officers, which he had caused to be placed there that date;

That on November 2, 1941, there was in effect Bureau of Customs Circular Letter No. 2015, dated October 19, 1939, containing rules for the enforcement of the Neutrality Laws of the United States, Par. 11 of which specified the circumstances under which special passes might be issued for entrance into the Customs enclosure;

That he has examined the files of his office and finds no evidence therein of any such special pass ever having been issued to C. T. Takahashi.

ROY L. BALLINGER

Subscribed and sworn to before me this 1st day of May, 1942, at Seattle, Washington

E. M. ROSSER

Deputy Clerk, United States
District Court, Western Dis-
trict of Washington

Thereafter, on the 4th day of May, 1942, the plaintiff also served and filed the affidavit of Ronald T. Symms in resistance to defendants' petitions for return of private papers, etc. This affidavit reads as follows:

[Title of District Court and Cause.]

United States of America

Western District of Washington—ss.

Northern Division [24]

Ronald T. Symms, being first duly sworn, on oath

deposes and says: That he is the Assistant Manager of the Seattle Branch of the Federal Reserve Bank of San Francisco, Fiscal Agent of the United States, and that this affidavit is made in resistance to defendants' Petition for return of papers, etc. and Motion to Quash.

That on November 3, 1941, acting under instructions from the Secretary of the Treasury of the United States and under the authority of the Executive Order of the President of the United States, No. 8389, issued April 10, 1940, as amended, by virtue of and pursuant to the authority vested in the President of the United States by Section 5(b) of the Act of October 6, 1917 (40 Stat. 415), as amended, and acting as an authorized officer of the Federal Reserve Bank of San Francisco, Fiscal Agent of the United States, he ordered anyone having property of C. T. Takahashi, C. T. Takahashi & Company and the China & Export Company to block it.

That on the evening of December 7, 1941, by virtue of the authority aforesaid, he ordered the office of C. T. Takashahi & Company and the China Import & Export Company at 212—5th Avenue South, Seattle, Washington, to be closed and to be placed in the custody of the United States Treasury Department through William R. Jarrell, Supervising Agent for the United States Secret Service, Treasury Department, and Coordinator of Treasury Enforcement Agencies located at Seattle, Washington. The said William R. Jarrell was instructed by affiant to retain possession of the office of said C. T.

Takahashi, C. T. Takahashi & Company and the China Import & Export Company and the control thereof until further orders from the United [25] States Treasury Department through said Federal Reserve Bank of San Francisco or otherwise.

The said instructions were issued by reason of the fact that on the 7th of December, 1941, and therefore, in the opinion of the authorized officers and agents of the United States Treasury Department and the Federal Reserve Bank of San Francisco acting in its capacity as Fiscal Agent of the United States, there was and had been reasonable cause to believe that said C. T. Takahashi, C. T. Takahashi & Company and the China Import & Export Company were acting and purporting to act directly and indirectly for the benefit of and on behalf of a national of a blocked foreign country, to-wit, a national of the Government of Japan.

RONALD T. SYMMS

Subscribed and sworn to before me this 4th day of May, 1942.

E. M. ROSSER

Deputy Clerk, U. S. District
Court, Western District of
Washington

On the 5th day of May, 1942, the plaintiff served and filed a supplemental affidavit of Ronald T. Symms as follows:

[Title of District Court and Cause.]

United States of America

Western District of Washington

Northern Division—ss.

Ronald T. Symms, being first duly sworn, on oath deposes and says: That he is the Assistant Manager of the Seattle Branch of the Federal Reserve Bank of San Francisco, Fiscal Agent of the United States, and that this supplemental affidavit is made in resistance to defendants' Petition for return of papers, etc. and Motion to Quash.

That on April 28, 1942, the defendant Charles T.

[26]

Takahashi made an application to the Federal Reserve Bank of San Francisco under Section 130.3, Regulations under Executive Order No. 8389, as amended, for license to either liquidate and/or remove for storage for the duration from the premises of C. T. Takahashi & Company, 212 5th Avenue South Seattle, all office equipment, furniture, and fixtures. Proceeds from the liquidation of any of the above equipment to be deposited in blocked account with the National Bank of Commerce, Seattle.

RONALD T. SYMMS

Subscribed and sworn to before me this 5th day of May, 1942.

E. M. ROSSER

Deputy Clerk, United States
District Court, Western Dis-
trict of Washington

And on the same day, May 5, 1942, the plaintiff served and filed the affidavits of John A. McNeill and John P. Hausman in resistance to said petitions and motion to quash as follows:

[Title of District Court and Cause.]

United States of America
Western District of Washington
Northern Division—ss.

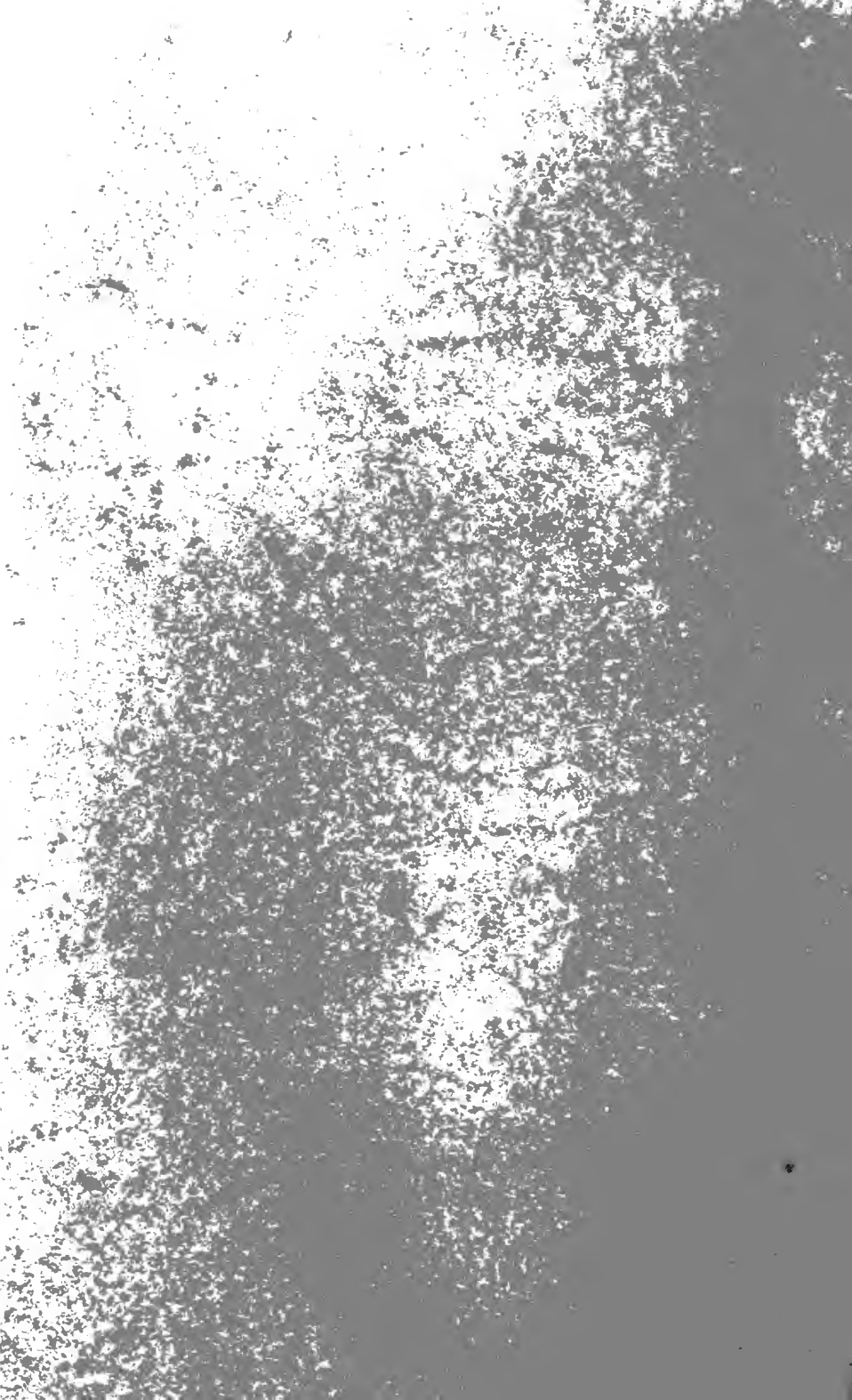
John A. McNeill, being first duly sworn, on oath deposes and says: That he is a Deputy Collector of Customs, Seattle, Washington; that plaintiff's "Exhibit A" was made after the baggage declaration was filed as required by Customs Regulations by the defendant Osawa; that the said Exhibit is an official record of the United States Customs Service at Seattle.

JOHN A. McNEILL

Subscribed and sworn to before me this 5th day of May, 1942.

TRUMAN EGGER

Deputy Clerk, U. S. District
Court, Western District of
Washington [27]



LARGE TRUNK

211-37	1	MASKS silk - 32 pco	10.00
53-77	2	PORCELAIN DOLL	2.50
72-33	4	WOODEN TRAYS	25.00
27-77	4	TCA SET 17 des. porc.	7.50
187-60	1	TCA SET glass, col.	6.50
246-54	4	LIGHT SHADE silk	1.50
1210-55	2	DOITERA (HOUSE COAT) silk	2.00
12-33	10	WOODEN SAUCERS	3.50
53-00	1	GLASS ASH TRAY	2.00
10-17	4	GLASS ASH TRAY	2.00
174-78	3	GLASS PLATES col.	7.50
748-35	7	DRIED PUMPKIN	50
187-60	1	CHERRY DISH (GLASS) col.	3.00
717-42	19	KAT40 DRIED FISH) - BOX	10.00
	22	KAT40 " " (2 lbs.)	5.00
	27	KAT40 " "	5.00
1527-65	1	8 CIGARETTE CASE (ALUMINUM)	16.00
	2	SILVER COMPACT	8.00
1783-6-2	1	CAN TCA contains value negligible	10.00
240-65	2	DOITERA (HOUSE COAT, silk) exp.	60.00
	1	SET BABY KIMONO	45.00
1518-70	1	TOY	2.50
363-58	2	KATANA 1/4 RD.	3.00

284.00

WARDROBE TRUNK

2187-60	1	GLASS CHERRY DISH col.	3.00
	10	TCA - 4 PS col. glass	4.00
1783-6-2	1	CAN TCA value cont. negligible	15.00
	1	PERSONAL EFFECTS	2.00

11/7/41
 1/2
 Ex



SUIT CASE

PKG. No.	ARTICLE	VALUE IN YEN
1210-65%	✓ 5 SCARF apple silk	10.00
1205-60%	✓ 1 ROLL SILK 4/30"	15.00
1208-60%	✓ 6 STOKING (SILK)	9.00
120-65%	✓ 1 SCARF silk	2.00
	✓ 1 SET JAPANESE MEN'S KIMONO	50.00
12-30%	✓ 2 K.P. dec. card (2pc in all)	5.00
1778	PERSONAL EFFECT	
		91.00
1205-60%	CARTON	
1PK.	✓ A. SILK CLOTH 4/30"	10.00
	✓ B. SILK CLOTH	15.00
1873-70%	✓ C. TOY DOLLSET	10.00
1732-31%	✓ E 3 PKG SEAWEED	3.00
1745%	✓ F WALL PENDANT ^{metal}	15.00
1813-70%	✓ G. TOY	3.00
		56.00
	Carton (details not listed)	
1877-40%	✓ 1 metal vase	10.00
403-25%	✓ 5 large p.m. bowls	5.00
107-65%	✓ 1 paper lantern, part bamboo	1.50
121-65%	✓ 1 silk hakamono	5.00
127-25%	✓ 3 parts muss. inst. (imp. of horn)	1.50
705-3%	✓ 3 cans seaweed	.60
	Overs:	
1527-2%	- 110%	
	100 pcs. Buff cloth lapel buttons, metal	80.00
1209-60%	2 doz silk handkerchiefs, plain, hemmed	12.00
	11/2/41	
	6/	



KORI "A"

PKG No	ARTICLE	VALUE IN YEN
0-200	✓ CHEAP DOLL	150
10-65	✓ A. KIMONO FOR CHILD <i>ink</i>	100
07-45	✓ B BAMBOO TRAY	100
01-50	✓ C 6 FANS	200
02-60	✓ D ASH TRAY	200
02-80	✓ E SANDALS <i>of yugens</i>	600
140	✓ A 2 SANDALS	600
07-65	✓ B. CHEAP CLIP <i>Jewelry</i>	250
07-80	✓ C 4 BRUSH <i>hair pins</i>	100
10-65	✓ 3 BELTS "SASH" <i>silk appl</i>	300
07-45	✓ DRIED FISH 2 lbs.	150
07-20	✓ CHEAP DOLL	350
07-45	✓ BAMBOO TRAY	200
40	✓ BAMBOO TRAY	200
023-200	✓ SEAWEED	100
006-40	✓ TEA	200
075-70	✓ 7 PC. CHEAP NOVELTIES <i>toys</i>	300
00-65	✓ OBI "SASH" <i>silk appl</i>	200
07-37	✓ SCHOOL MADE FOODS <i>custom appl.</i>	50
08-25	✓ COLORED PAPER <i>paper mfg.</i>	50
10-65	✓ OBI "SASH" <i>silk appl.</i>	500
02-33	✓ 3 WEATHER VANE <i>wood mfg.</i>	450
0-25	✓ MEDICINE <i>pills</i>	150
00-35	✓ BUCKLE TORTOISE <i>shell mfg.</i>	200
07-0-65	✓ CHEAP BRACELET <i>jewelry</i>	150
02-70	✓ TEA SET (4 PC) <i>de. por. 8 pc</i>	250
527-2	✓ 2 pr cuff links } <i>Yen 500</i>	
	2 brooches } <i>Jewelry</i>	

6950

11/2/41
J. J. J.
67

DEPARTMENT OF COMMERCE
BUREAU OF CUSTOMS

1111
(Number)

UNITED STATES CUSTOMS SERVICE

RECEIPT FOR BAGGAGE AND PERMIT

Port of Seattle, Wash, 192

The following packages imported on the

Hipona Maru
No. 2
by YASUHI OSAWA

have been sent to public store Federal
 retained on wharf Official Wharf

MARKS AND NOS.:

- 1 custom
- 3 trunks.
- 5 cases.
- 6 boxes Paper
- 3 backpack
- 4 Trunks

Value claimed \$175.20 202 total pieces.

Said to contain No dice

To be shipped in bond to

[Signature] Inspector.

PERMIT.

✓ Above packages released for C.E. 950 (Export, etc.) 192

_____ of Customs.

NOTICE.—Above baggage, if not transferred from wharf within 48 hours, will be sent to Public Store (New York, 641 Washington Street).

EXPORT BAGGAGE will be retained in Public Store until 24 hours before departure.

Present this receipt at Customhouse to obtain shipping permit.



Customs Form 200
TREASURY DEPARTMENT
APR. 1909, U. S. R. 1907; T. D. 6046
August 1907

UNITED STATES CUSTOMS SERVICE

No. 6

TICKET FOR GOODS DELIVERED FROM STORE, ETC.

(If goods are withdrawn for exportation, transportation, or transfer, this form shall be prepared IN QUADRUPPLICATE; ORIGINAL to be forwarded to Collector at close of business each day as report of goods withdrawn; DUPLICATE for cartman or lighterman; TRIPPLICATE for use of officer to whom goods are to be delivered; and QUADRUPPLICATE for storekeeper's record. In all other cases, to be prepared IN TRIPPLICATE; ORIGINAL for Collector; DUPLICATE for cartman or lighterman; and TRIPPLICATE for storekeeper's record.) T. D. 6046.

PORT Seattle Wa Nov 3 1941

Goods delivered from store at apps to be delivered

to _____ ON _____ Permit, W. H. Entry No. _____
(Importer, Vessel, Hook No., etc.) (Consumption, Export, etc.)

MARKS AND NUMBERS

Hokawa Maru 11/2

DESCRIPTION

CONDITION, ETC.

Y. OSAWA

22 Pcs.
(Bush & Co)

Bay Sec
118151

S.F. 1341

NOV. 12 1941
Birks

Total Packages No. (22)

C. H. License No. _____ City No. _____ Truck or Lighter No. _____

Delivered to cartman or lighterman in good condition unless otherwise noted. Received from warehouse in good condition unless otherwise noted.

By Nov 11/10 41 Casabee Hr. _____, 19_____
(Inspector or storekeeper)

By [Signature] Hr. _____, 19_____
(Cartman or lighterman)

Signature _____
(Warehouse proprietor)

Signature _____
(Warehouse proprietor) (Inspector or storekeeper)



[Title of District Court and Cause.]

United States of America

Western District of Washington

Northern Division—ss.

John P. Hausman, being first duly sworn, on oath deposes and says: That he is President of Geo. S. Bush & Co., Inc., Customs Broker, and that this affidavit is made in resistance to defendants' Petition for return of papers, etc. and Motion to Quash.

That plaintiff's Exhibit #2 is a consumption entry, United States Customs Service which was signed by Edward Y. Osawa, also known as Yoshi-mi Osawa, before me as Notary Public in and for the State of Washington; that said Exhibit was prepared under direction of the affiant from defendant's Exhibit "A", being the baggage declaration and entry of the above named Osawa; that said consumption entry was to be filed in the Custom House at Seattle and is a summary of all the articles with the respective values of all of the articles as listed in the baggage declaration and entry and was prepared on November 12, 1941.

JOHN P. HAUSMAN

Subscribed and sworn to before me this 5th day of May, 1942.

TRUMAN EGGER

Deputy Clerk, U. S. District
Court Western District of
Washington

Plaintiff's Exhibit #2, referred to in the affidavit of John P. Hausman follows: [35]

PLAINTIFF'S EXHIBIT No. 2

Customs Form 7501

Treasury Department

Arts. 310, 344, 423, 435, 505, C. R. 1937;

T. D.'s 49658, 50251

Dec. 1940

T. E. No. Copy for This space for number
 (Collector, comptroller, statistics, etc.) and date of entry
 Port from CONSUMPTION ENTRY
 Via United States Customs Service S.E. 950
 (Bonded carrier) District No. 30 Nov. 12, 1941
 Port of—Seattle, Wash. Term Bond

U. S. Appraiser's Store
 Date filed—November 12, 1941

Merchandise imported by—Yoshimi Osawa

(Name and address)

Arrived on the—Jap M/S "Hikawa Maru on Nov. 2, 1941, from—Yokohama

(Name of importing vessel or carrier. If vessel, give flag and motive power) (Date of original importation)

Exported from—Japan on 10/20/41 P. F., Yokohama, Japan

(Country) (Date) (Consular Invoice Number, place, and date certified)

Marks and Numbers	Merchandise Packages and Description	Tariff Paragraph	Value in Foreign Money	Entered Value in U.S. Money	Rate	Duty
	Quantity			Dollars only		Dollars Cts.

Jap Yen @ .23439

Baggage Declaration #118151

22 pkgs. cont'g:

Silk Fabric

Jap Yen

1205 195.00

.46

60%

20.16

Plaintiff's Exhibit No. 2—(Continued)

Marks and Numbers	Merchandise Packages and Description Quantity	Tariff Para- graph	Value in Foreign Money Jap Yen	Entered Value in U.S. Money Dollars only	Rate	Duty Dollars Cts.
	Baggage Declaration #118151—Cont.					
	Silk Scarves (Wg. Apparel)	1210	228.00	53	65%	34.45
	Handkerchiefs (Silk) 14 dz.	1209	34.50	8	60%	4.80
	Stockings 3 doz.	1208	45.00	10	60%	6.00
	Lacquerware	412	58.60	14	33 $\frac{1}{8}$ %	4.67
	Cloisone Vases	339	302.00	71	50%	35.50
	Dec. Earthenware	211	15.00	4	50%	2.00
	3 dz. pcs., Tableware Hhd.				10c dz.	.30
	Toys, (dolls)	1513	135.50	32	70%	22.40
	Dec. Porcelain	212	56.00	13	70%	9.10
	4 dz. Hhd. Tableware				10c dz.	.40
	Blown Glassware	218f	24.00	6	60%	3.60
	Mfrs. of Silk	1211	12.00	3	65%	1.95
	Art. 299 (b) (6)	1552	20.00	5	60%	3.00
	J.A.M. (continued)					
	D.C.					

[Stamp]: WEIGH

[In pencil]:

[Stamp]: PAID Nov. 12 1941. By (illegible), Cashier
 Number of invoices..... W. H. Entry No..... G. O. No.....

Signature
 Per—Yashimi Osawa
 Address—4010 - 48th So.
 Seattle, Wash.

This form may be printed by private parties provided it conforms to official form in size, wording, color, and arrangement. For sale by collectors of customs at price of 25 cents for block of 100.

Plaintiff's Exhibit No. 2—(Continued)

Customs Form 3297

TREASURY DEPARTMENT

Art. 410, C.R. 1931

Feb. 1934

Declaration for the Free Entry of Articles Taken
Out of the United States By the Importer and
for Articles Acquired Abroad by Returning Resi-
dents of the United States

(To be used when articles do not accompany the
passenger and were not listed on a baggage decla-
ration and entry)

United States Customs Service

District No. 30, Port of Seattle, Wash.. Nov. 10,
1941

I, Yoshimi Osawa, declare under oath that I am
a resident of Seattle, State of Washington; that I
last departed from the United States in the Jap
M/S "Hikawa Maru" on or about the 7th day of
(Vehicle or carrier)

March, 1941, from the port of Seattle; that I ar-
rived in the United States on my return at the
port of Seattle, Wash. on or about the 2nd day of
November, 1941, in the Jap. M/S "Hikawa Maru"
(Vehicle or carrier)

from Yokohama, accompanied by; that, except such
as are hereinafter enumerated, all the articles now
(Wife, child, maid, etc)

imported by me in the "Hikawa Maru" from Japan
(Me or us) (Vehicle or carrier)

Plaintiff's Exhibit No. 2—(Continued)

arriving on or about Nov. 2, 1941, consist of wearing apparel or personal or household effects taken abroad by me, or by those members of my family now accompanying me, for personal use; and that no repairs or alterations were made to such articles abroad, except as follows:

(If any repairs or alterations were made abroad, describe the articles and state the cost of repairs or alterations, and the character thereof. If none were made, so state)

Name of articles
Description of repairs
Cost or value of repairs

I further declare that the following-described articles were acquired abroad for personal or household use, or as souvenirs or curios, and that none of these was bought or otherwise acquired on commission, or is intended for sale:

Description
8 items listed on consumption entry
Cost or value

Yen 428.00

(If no such articles were acquired abroad, so state)

I further declare that I have not during the past 30 days preceding my arrival above referred to received an exemption from duty such as is allowed a returning resident of the United States, except as follows:

I further declare that the following-described ar-

Plaintiff's Exhibit No. 2—(Continued)

articles were acquired abroad on a commission for other persons, or are intended for sale:

Description
Cost or value

(If no such articles were acquired abroad, so state)

(Signature) YOSHIMI OSAWA

Declared to under oath before me this 8 day of Nov., 1941.

(Name) JOHN P. HAUSMAN

(Official title) Notary Public.

(Note.—This declaration must be made before some person duly authorized to administer oaths. If a family has been traveling abroad, it may be made for the family by the principal member thereof) [37]

Plaintiff's Exhibit No. 2—(Continued)

Customs Form 7501 B
 Treasury Department
 T. D. 37789
 June 1933

Entry No.

CONSUMPTION ENTRY—Continuation Sheet

Importer—Yoshimi Osa-
 wa.

U. S. Customs Service

Marks and Numbers	Merchandise Packages and Description	Quantity	Tariff Paragraph	Value in Foreign Money Jap Yen	Entered Value in U.S. Money Dollars only	Rate	Duty Dollars Cts.
	Dried Fish 20 lbs.		717c	23.50	5	1¼c lb.	.25
	Jewelry		1527				
	Tea 9 lbs.		(e)	30.50	7	65%	4.55
	Swords 2 pcs.		1783	27.00	6	Free	Free
	Mosquito Net		363	30.00	7	50%	3.50
			1529				
	Seaweed		(a)	15.00	3	90%	2.70
	Mfrs. of Cotton		1722	6.60	2	Free	Free
	Mfrs. of Glass		919	4.00	1	37½%	.38
	Miso		230	13.00	3	50%	1.50
	Toys		775	25.50	6	35%	2.10
	Mfrs. of Metal		1513	13.00	3	70%	2.10
	Metal Vase 1 pc.		397	16.50	4	45%	1.80
	Lacquer Bowls 5 pcs.		339	10.00	2	40%	.80
			1403	6.50	1	25%	.25

Plaintiff's Exhibit No. 2—(Continued)

Marks and Numbers	Merchandise Packages and Description	Tariff Paragraph	Value in Foreign Money Jap Yen	Entered Value in U.S. Money Dollars only	Rate	Duty Dollars Cts.
	Jewelry	1527				
		(c)	85.00	20	110%	22.00
	Sandals	1530				
		(e)	16.00	4	35%	1.40
	Hair Pencils 4 pcs.	1506	1.00	1	2c ea.	.08
	Mfrs. of Silk	1210	5.00	1	65% q	.65
	Exemptions claimed by returning American citizen:	1798			Free	Free
	Pink & White Silk Material 15 yds.		42.00	10		
	Printed Silk Kimonos 4 pcs.		64.00	15		
	Printed House Coats 6 pcs.		42.00	10		
	Mans Silk Robe 1 pc.		15.00	3		
	Silk Stockings 2 doz.		48.00	11		
	Brocade Obi Material 10 yds.		130.00	30		
	Silk Shirts 9 pc.		63.00	15		
	Silk Pajamas—2 prs.		24.00	5		
			<hr/> 1881.70	<hr/> 441		<hr/> 192.39

[38]

[Stamp]: Nov 12 1941. By (illegible) Cashier.

For sale by Collectors of Customs at price of 25 cents for block of 100.

Plaintiff's Exhibit No. 2—(Continued)

Customs Form 6417-A
 Treasury Department
 T. D. 50251
 Dec. 1940

Entry No.
 Importer—Yoshimi Osa-
 wa.

SUMMARY OF ENTERED VALUES

—Continuation Sheet
 U. S. Customs Service

Marks and Numbers	Merchandise Packages and Description	Tariff Paragraph	Value in Foreign Money Jap Yen	Entered Value in U.S. Money Dollars only	Rate	Duty Dollars Cts.
	Dried Fish 20 lbs.	717c	23.50	5	1¼c lb.	.25
	Jewelry	1527				
	Tea 9 lbs.	(e)	30.50	7	65%	4.55
	Swords 2 pcs.	1783	27.00	6	Free	Free
	Mosquito Net	363	30.00	7	50%	3.50
		1529				
	Seaweed	(a)	15.00	3	90%	2.70
	Mfrs. of Cotton	1722	6.60	2	Free	Free
	Mfrs. of Glass	919	4.00	1	37½%	.38
	Miso	230	13.00	3	50%	1.50
	Toys	775	25.50	6	35%	2.10
	Mfrs. of Metal	1513	13.00	3	70%	2.10
	Metal Vase 1 pc.	397	16.50	4	45%	1.80
	Lacquer Bowls 5 pcs.	339	10.00	2	40%	.80
		1403	6.50	1	25%	.25

Plaintiff's Exhibit No. 2—(Continued)

Marks and Numbers	Merchandise Packages and Description Quantity	Tariff Para-graph	Value in Foreign Money Jap Yen	Entered Value in U.S. Money Dollars only	Rate	Duty Dollars Cts.
	Jewelry	1527				
		(c)	85.00	20	110%	22.00
	Sandals	1530				
		(e)	16.00	4	35%	1.40
	Hair Pencils 4 pcs.	1506	1.00	1	2c ea.	.08
	Mfrs. of Silk	1210	5.00	1	65% q	.65
	Exemptions claimed by returning American citizen:	1798			Free	Free
	Pink & White Silk Material 15 yds.		42.00	10		
	Printed Silk Kimonos 4 pcs.		64.00	15		
	Printed House Coats 6 pcs.		42.00	10		
	Mans Silk Robe 1 pc.		15.00	3		
	Silk Stockings 2 doz.		48.00	11		
	Brocade Obi Material 10 yds.		130.00	30		
	Silk Shirts 9 pc.		63.00	15		
	Silk Pajamas—2 prs.		24.00	6		
			<hr/> 1881.70	<hr/> 441		<hr/> 192.39

Plaintiff's Exhibit No. 2--(Continued)

SUMMARY OF EXAMINATION AND APPRAISEMENT

CE 950

(Kind of entry and number)
11/12, 1941

Appraiser:

The attached invoice(s) was(were) presented with the above-specified entry. Pursuant to section 499 of the Tariff Act of 1930, I hereby designate the following packages or quantities to be opened and examined at the place or places specified: [Stamp]: WEIGH

Page No.

Packages or Quantities

Place of Examination

[Stamp]: WEIGH

[In writing]: All

[Stamp]: IN APPRAISERS STORE

G. TULEEN, Deputy Collector.

Collector:

Nov 13 1941

The examination and appraisalment of the merchandise covered by the attached invoice(s) have been made in accordance with law, and the following is a summary of my report thereof as noted on the invoice(s):

Plaintiff's Exhibit No. 2—(Continued)

EXPLANATION.—A check mark (✓) in the appropriate column below indicates that—(a) the appraised value agrees with the entered value as represented by the information set forth on the invoice and in any importer's notations endorsed thereon or attached thereto; (b) the advisory classification agrees with that indicated by the importer on the invoice(s); or (c) the quantities in the packages ordered for examination are correctly stated on the invoice(s), as the case may be. Findings at variance with the invoice description and information are indicated by notations in the appropriate columns below as follows: Value advanced, "Adv"; value reduced, "Red"; higher rate applies, "RA"; lower rate applies, "RR"; excess quantity, "E"; shortage in quantity, "S"; not legally marked, "NLM"; prohibited, "P."

Marks and Numbers	Examiner and Date of Examination	Appraised	Advisory Classification	Quantities	Date of Release	Remarks
Addressed 22 var pkgs.	SSB Nov. 12, 1941	✓	✓	✓	Nov. 12, 1941	ALAN J. (Illegible), Appraiser.

[40]

Plaintiff's Exhibit No. 2--(Continued)

SUMMARY OF EXAMINATION AND APPRAISEMENT CE

(To be attached to invoice(s) this side up) (Kind of entry and number)
11/12, 1941

Appraiser:
The attached invoice(s) was(were) presented with the above-specified entry. Pursuant to section 499 of the Tariff Act of 1930, I hereby designate the following packages or quantities to be opened and examined at the place or places specified:

Page No.	Packages or Quantities [Followed by blank ruled form]	Place of Examination
	Collector.

Collector: (Date).....

The examination and appraisal of the merchandise covered by the attached invoice(s) have been made in accordance with law, and the following is a summary of my report thereof as noted on the invoice(s):

Plaintiff's Exhibit No. 2--(Continued)

EXPLANATION.—A check mark (✓) in the appropriate column below indicates that—(a) the appraised value agrees with the entered value as represented by the information set forth on the invoice and in any importer's notations endorsed thereon or attached thereto; (b) the advisory classification agrees with that indicated by the importer on the invoice(s); or (c) the quantities in the packages ordered for examination are correctly stated on the invoice(s), as the case may be. Findings at variance with the invoice description and information are indicated by notations in the appropriate columns below as follows: Value advanced, "Adv"; value reduced, "Red"; higher rate applies, "RA"; lower rate applies, "RR"; excess quantity, "E"; shortage in quantity, "S"; not legally marked, "NLM"; prohibited, "P."

Marks and Numbers	Examiner and Date of Examination	Appraised	Advisory Classification	Quantities	Date of Release	Remarks
[Followed by blank ruled form]						
....., Appraiser.						

[41]

Plaintiff's Exhibit No. 2—(Continued)

Customs Form 6417

Treasury Department

Arts. 298, 302, 312, 313, 317, 769, 772.

776, 784, 818, 865, C. R. 1937;

T. D.'s 46296, 49658, 50251

Dec. 1940

[Rubber Stamp]: Geo. S. Bush & Co., Inc.

Custom Brokers 259-62 Colman Bldg.

Seattle, Wash.

SUMMARY OF ENTERED VALUES

United States Customs Service

District No. 30

(Bonded carrier) Port of—Seattle, Wash.

This space for number
and date of entry

S.E.

xx

U. S. Appraiser's Store

Date filed—November 12, 1941

Merchandise imported by—Yoshimi Osawa

(Name and address)

Arrived on the—Jap M/S "Hikawa Maru on Nov. 2, 1941, from—Yokohama

(Name of importing vessel or carrier. If vessel, give flag and motive power) (Date of original importation)

Exported from—Japan on 10/20/41 P. F.; Yokohama, Japan

(Country) (Date)

(Consular Invoice Number, place, and date certified)

Plaintiff's Exhibit No. 2—(Continued)

Marks and Numbers	Merchandise Packages and Description Quantity	Tariff Paragraph	Value in Foreign Money Jap Yen	Entered Value in U.S. Money Dollars only	Rate	Duty Dollars Cts.
Jap Yen @ .23439						
Baggage Declaration #118151						
22 pkgs. cont'g:						
	Silk Fabric	1205	195.00	46	60%	20.16
	Silk Scarves (Wg. Apparel)	1210	228.00	53	65%	34.45
	Handkerchiefs (Silk) 14 doz.	1209	34.50	8	60%	4.80
	Stockings 3 doz.	1208	45.00	10	60%	6.00
	Lacquerware	412	58.60	14	33 $\frac{1}{3}$ %	4.67
	Cloisone Vases	339	302.00	71	50%	35.50
	Dec. Earthenware	211	15.00	4	50%	2.00
	3 dz. pcs. Tableware Hhd.				10c dz.	.30
	Toys, dolls)	1513	135.50	32	70%	22.40
	Dec. Porcelain	212	56.00	13	70%	9.10
	4 dz. Hhd. Tableware				10c dz.	.40
	Blown Glassware	218f	24.00	6	60%	3.60
	Mfrs. of Silk	1211	12.00	3	65%	1.95
	Smokers' Articles	1552	20.00	5	60%	3.00

(continued)

Number of invoices..... W. H. Entry No..... G. O. No.....

Signature

Per

Address—4010 - 48th So.
Seattle, Wash.

0
1941

Yokohama,

Mr. Edward G. Osawa

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NIKKO & FUJI CO.,

EXPORTERS & MANUFACTURERS

— IN —

SILK AND CURIOS

NO. 21, 2-CHOME BENTEN-DORI, YOKOHAMA, JAPAN.
TEL. NO. (HONKYOKU) 3013

新物産貿易品部

日光富士商會

新橋市中區新大橋二ノ二

電話本局三〇一三番

CABLE ADDRESS

NIKKO FUJI-YOKOHAMA
BENTLEY'S CODE-USED

PROPRIETOR

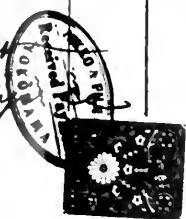
M. NAKAYAMA

Date	No.	DESCRIPTION	Quantity	@	Amount
1798- Feb	1205-60%	Pink Silt material ^{4 3/4"}	5 yds	2.80	14.00 x
1205-60%	200	"	5 s	2.80	14.00 x
		White "	5 s	2.80	14.00 x
1210-65%		Men's Scarfs silk ppl	3	1.50	4.50
1209-60%		Handkerchief silk, hemmed	1 Doz		6.00

52.50

11/14/41
Birks
St

Rec'd Payment
Osawa & Fuji



6



1941

Yokohama,

Mrs. Edward Y. Osawa

CABLE ADDRESS

NIKKO FUJI YOKOHAMA
BENTLEY'S CODE USED

PROPRIETOR

M. NAKAYAMA

NIKKO & FUJI CO.,

EXPORTERS & MANUFACTURERS

IN

SILK AND CURIOS

NO. 21, 2-CHOME BENTEN-DORI, YOKOHAMA, JAPAN.
TEL. NO. (HONKYOKU) 3013

新物雜貨貿易商

日光富士商會

橫濱市中西區通天通二ノ一

電話本局三〇一三番

Date	No.	DESCRIPTION	Quantity	①	Amount
1798/322 1208-60%	1205-60%	Stocking. silk	24	2.00	<u>48.00</u> x
11/2/41 Bills &					
Rec'd Payment Nikko & Fuji					



Mr. Edward J. Osawa Yokohama, Aug. 1921

NIKKO & FUJI CO.,
EXPORTERS & MANUFACTURERS

PROPRIETOR
M. NAKAYAMA

IN
SILK AND CURIOS
No. 21, 2-CHOME BENTEN-DORI YOKOHAMA, JAPAN.
TEL. (MONYOKU) No. 2-3013

CABLE ADDRESS
NIKOFUJI, YOKOHAMA
SENLEY'S CODE - U860

Date	No.	DESCRIPTION	Quantity	@	Amount
1205-601		1205-601. ^{no 30"} Cebel de chine materials ✓ 48 1/2	48 1/2	280	¥135.80
412-33 1/2		Laquer Dryf and ✓ 12	12	0.80	9.60
		✓ cocktail set ✓ 1	1	10.00	10.00
		✓ hair cups ✓ 6	6	1.00	6.00
		Printed Timonovail ✓ 4	4	16.00	64.00
		✓ usual coats ✓ 6	6	7.00	42.00
		✓ Brocade Ch materials ✓ 10	10	13.00	130.00
		Men's Pile ✓ 1	1	15.00	15.00
		Ladies Square Trench ✓ 3	3	3.00	9.00
		✓ 1	1	7.50	7.50
		✓ 9	9	7.00	63.00
		Men's Socks ✓ 3	3	20.00	60.00
		Men's Gajama's ✓ 2	2	12.00	24.00
		✓ 1	1	9.00	9.00
		✓ 2	2	30.00	60.00
		✓ 5	5	26.00	130.00
		✓ 4	4	18.00	72.00
		✓ 4	4	10.00	40.00
		✓ 1	1	862.90	862.90

Received Payment
Nikko & Fuji Co





Plaintiff's Exhibit No. 2—(Continued)

Department of Agriculture

T. I. S. Cat. No. 1

TEA CHOP LIST AND RELEASE PERMIT

Request for Examination

U. S. Tea Inspection Service

Port of—Seattle, Wash.

To U. S. Tea Examiner Port of—Seattle, Wash. Port

Entry No.—950

Nov 12 1941

Bond No.—S. E.

I. T. No.....

Date—Nov. 12, 1941.

Sir:

Examination is requested of the teas entered as noted above.

Imported by—Yoshimi Osawa Shipped by—Yoshimi Osawa of

Imported in the—Jap. S/S "Hikawa Maru" Arrived from—Yokohama on—Oct. 20, 1941.

Subject to the provisions of the Act of March 2, 1897, and amendments thereto.

To be sampled at—U. S. Appraiser's Store

(Pier number or warehouse address)

Invoice No.—Baggage Declaration #118151 Date, 19..... Place.....

Marks and Numbers	No. of Packages	Kind	How Packed	Net Lbs. Each	Total Net Pounds	Dutiable Coverings	Examiner's Action
#26	2 cans	Tea		1#	2#	No	
31	6 pkgs.	"		1#	6#	"	
47	1 pkg.	"		1#	1#	"	

Plaintiff's Exhibit No. 2—(Continued)

(Excepting such packages
as are damaged)

Transmitted to Tea Examiner by Signature of importer:
of Customs. YOSHIMI OSAWA
Address—Seattle, Wash.

REPORT OF EXAMINATION AND RELEASE PERMIT

Port of Date—Nov 12 1941

To the Storekeeper or Inspector:

Samples of the teas described above have been examined and found—Not to come within the prohibition of the Act of March 2, 1897, and amendments, and the teas are released except as noted on margin. If contents or coverings are found dutiable, this release must be countersigned by collector.

Cause of rejection (if any):

None

L. W. NEWTON
Tea Examiner.

This form to be made in duplicate at examining ports, triplicate at other ports. If this form is used as a pro forma invoice, give value of dutiable coverings. [46]

Plaintiff's Exhibit No. 2—(Continued)

Customs Form 7551

Treasury Department

Arts. 260, 270, 272, 289, 299, 300, 314, 354, 412, 482, 497, 553, 574, 591, 625, 633, 697, 770, 795, 910, 1254 C. R. 1937; T. D.'s 45474, 49658 June 1939

No. 950

UNITED STATES CUSTOMS SERVICE
SINGLE CONSUMPTION ENTRY BOND

(To redeliver merchandise, to produce documents, to perform conditions of release, such as to label, hold for inspection, set-up, etc. To be taken in all cases when release is requested prior to inspection, examination, or liquidation).

Know All Men By These Presents, That* Yoshimi Osawa of Seattle, Washington, as principal, and* Fidelity & Deposit Co. of Md., of Baltimore, Md. and, of as sureties, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of Eight Hundred dollars (\$800.00) for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this 12th day of November, 1941

Whereas, certain articles have been imported at the port of Seattle, Wash. and entered at said port for consumption on entry No. 950 dated Nov. 12, 1941, and described therein and

Whereas, the said principal desires release of said

Plaintiff's Exhibit No. 2—(Continued)

articles prior to the ascertainment by customs officers of the quantity and value thereof, and of the full amount of the duties and charges due thereon, and prior to the decision by the proper officer as to the right of said articles to admission into the United States:

Now, Therefore, the Condition of This Obligation is Such, That—

(1) If the above-bounden principal shall redeliver or cause to be redelivered to the order of the Collector of Customs, when demanded by such collector (the said demand to be made not later than twenty (20) days after the appraiser's report), such of the merchandise as was not sent to the public stores, and also shall redeliver to the collector, on demand by him, in accordance with law and regulations in effect on the date of the release of said articles, any and all merchandise found not to comply with law and regulations in effect on the date of the release of said articles, any and all merchandise found not to comply with the law and regulations governing its admission into the commerce of the United States, and if the said principal shall mark, label, clean, fumigate, destroy, export, and do any and all other things in relation to said articles that may be lawfully required, and shall hold the same for inspection and examination; or if, in the event of failure to comply with any or all of the conditions hereinabove referred to, he shall pay the said collector an amount equal to the value of said art-

Plaintiff's Exhibit No. 2—(Continued)

icles as set forth in said entry, plus the duty thereon;

(2) And if the above-bounden principal shall deliver to the said collector such consular invoices, declarations of owners or consignees, certificates of origin, certificates of exportation, and other declarations, certificates, and documents as may be required by law or regulations in connection with the entry of said articles, and in the form and within the time required by law or regulations, or any lawful extension thereof, or in the event of failure to comply with any or all of the conditions of this section shall pay to said collector such amounts as liquidated damages as may be demanded by him in accordance with the law and regulations, not exceeding the penal sum of this obligation for any breach or breaches thereof;

Then this obligation to be void; otherwise to remain in full force and effect.

Plaintiff's Exhibit No. 2—(Continued)

Signed, sealed and delivered in the presence of—
S. DUSTEIN

Seattle, Wn.

H. B. WESLEY

Seattle, Wn.

S. DUSTEIN

Seattle, Wn.

H. B. WESLEY

Seattle, Wn.

YOSHIMI OSAWA

(Principal)

FIDELITY & DEPOSIT CO.

OF MD.

By JOHN P. HAUSMAN [Seal]

Attorney-in-Fact

*If the principal or surety is a corporation, the name of the State in which incorporated should also be shown. [47]

Plaintiff's Exhibit No. 2--(Continued)

Marks and
NumbersQuantity and Description of
Merchandise

Jap Yen @ .23439

Baggage Declaration #118151

22 pkgs. cont'g:

Silk Fabric

Silk Scarves (Wg. Apparel)

Handkerchiefs (Silk) 14 doz.

Stockings 3 doz.

Lacquerware

Cloisone Vases

Dec. Earthenware

3 dz. pcs. Tableware Hhd.

Toys. (dolls)

Dec. Porcelain

4 dz. Hhd. Tableware

Blown Glassware

Mfrs. of Silk

Smokers' Articles

(continued)

Sent to Appraiser's Stores

[Stamp]: IN APPRAISERS STORE

[Stamp]: WEIGH

[Stamp]: PAID Nov 12 1941. By (illegible)
Cashier.

(Cut carbon paper on this line if this blank is used as copy)

Plaintiff's Exhibit No. 2--(Continued)

Duty Paid, \$192.39

Cashier's Stamp--Nov. 12, 1941
To the Collector:

I Certify that the above-described goods have been examined. (or samples taken)

BIRKS

Examiner ~~or~~
~~Samples~~

I Certify that the above-described goods have been weighed, gauged, or measured as directed.

.....
Weigher, Gauger, or
Measurer

If free, stamp or note in red ink

To the Inspector:

You will dispose of goods ordered for examination as directed above, and release the remainder from customs custody to or upon the order of the carrier by which the merchandise is brought to this port. All goods will be inspected, examined, weighed, gauged, measured, or stamped as directed, and return thereof made hereon.

Station--Apprs.
Nov 12 1941

To the Collector:

The articles described above have been landed, released, sent to appraiser's stores, or otherwise disposed of as directed, and in apparent good order, except as noted.

L. C. CASIBEER,
Clerk

G. TULEEN
Deputy Collector
[48]

Plaintiff's Exhibit No. 2—(Continued)

Customs Form 7501 B
 Treasury Department
 T. D. 37789
 June 1933

Entry No.
 Importer

CONSUMPTION ENTRY—
 Continuation Sheet

U. S. Customs Service

Entered Value in U.S. Money
 Rate Dollars Cts.
 Duty Dollars only

Value in Foreign Money
 Tariff Paragraph

Merchandise Packages and Description
 Quantity

Dried Fish 20 lbs.
 Jewelry

Tea 9 lbs.
 Swords 2 pcs.
 Mosquito Net

Seaweed
 Mfrs. of Cotton
 Mfrs. of Glass
 Miso
 Toys
 Mfrs. of Metal
 Metal Vase 1 pc.

Plaintiff's Exhibit No. 2—(Continued)

Marks and Numbers	Merchandise Packages and Description	Quantity	Tariff Paragraph	Value in Foreign Money	Entered Value in U.S. Money	Rate	Duty
							Dollars Cts.
	Lacquer Bowls	5 pcs.					
	Jewelry						
	Sandals						
	Hair Pencils	4 pcs.					
	Mfrs. of Silk						
	Exemptions claimed by returning American citizen:						
	Pink & White Silk Material	15 yds.					
	Printed Silk Kimonos	4 pcs.					
	Printed House Coats	6 pcs.					
	Man's Silk Robe	1 pc.					
	Silk Stockings	2 doz.					
	Brocade Obi Material	10 yds.					
	Silk Shirts	9 pc.					
	Silk Pajamas	—2 prs.					

For sale by Collectors of Customs at price of 25 cents for block of 100.

On the 4th day of May, 1942, the defendant, Charles T. Takashashi, served and filed his affidavit, in reply to plaintiff's affidavits, as follows:

[Title of District Court and Cause.]

State of Washington

County of King—ss.

Charles T. Takahashi, being first duly sworn, deposes and says: That he has read the affidavit of Roy L. Ballinger together with the affidavits of A. D. Richards and A. S. Atherton with reference to permit issued to affiant to meet passengers arriving on ship board from Japan and accompanying them through the Customs. That on the second day of November, 1941, affiant in possession of said pass met and went aboard the Japanese ship Hikawa Maru and accompanied Edward Y. Osawa through the Customs openly and in the presence of a number of Customs officials not including, however, A. S. Atherton or A. D. Richards. That affiant accompanied the said Edward Y. Osawa with the knowledge and consent of Customs officers whose names are unknown to affiant. That affiant had for a number of years followed that said practice without objection or interference on the part of the Customs officers stationed in Seattle, and that affiant at all times was within his rights and was not guilty of any violation of any Federal law.

CHARLES T. TAKAHASHI

Subscribed and sworn to before me May 4, 1942.

GEO. H. CRANDELL

Notary Public

And on the same day, May 4, 1942, the defendant, Edward Y. Osawa, served and filed his affidavit, in reply to plaintiff's affidavits, as follows:

[Title of District Court and Cause.]

State of Washington

County of King—ss.

Edward Y. Osawa, being duly sworn, deposes and says: That he has read the affidavits of A. S. Atherton, A. D. Richards, A. J. Frankel, and A. H. Koons with reference to the letter attached to the affidavits of said officers, [51] which letter is marked Exhibit A, and with reference thereto affiant alleges that on to-wit: the second day of November, 1941, while he was a passenger on the steamship Hikawa Maru and before said ship had docked at Seattle, affiant prepared an itemized list of all the articles in his possession, and that on said list the six pairs of silk stockings referred to in said letter marked Exhibit A were mentioned and declared, and that said list was caused to be delivered to a Customs officer who had boarded said ship, the delivery having been made to said officer before the ship docked.

EDWARD Y. OSAWA

Subscribed and sworn to before me May 4, 1942.

GEO. H. CRANDELL

Notary Public

On May 5, 1942, the defendant, Charles T. Takahashi served and filed a further reply affidavit as follows:

[Title of District Court and Cause.]

State of Washington

County of King—ss.

Charles T. Takahashi, being first duly sworn, deposes and says:

That he has read the affidavit of Edward Y. Osawa, and that the statements therein contained so far as they pertain to the conduct of affiant are substantially true. That at no time while passing through the Customs were there papers of any kind exchanged between said Edward Y. Osawa and affiant other than the mutual examination of a list of articles contained in Mr. Osawa's luggage, which was mutually consulted from time to time by both affiant and the said Edward Y. Osawa. That affiant met the ship [52] on the second of November in response to a telegram received via Western Union requesting affiant to bring \$200.00 in American money to pay tariff or customs fees. That continually from the time affiant reached the dock until the search was made affiant was in the immediate presence of the said Edward Y. Osawa and customs officers other than A. S. Atherton and A. D. Richards and was engaged in conversation with the said officers almost continually.

CHARLES T. TAKAHASHI

Subscribed and sworn to before me May 5, 1942.

GEO. H. CRANDELL

Notary Public

On the same day, May 5, 1942, the defendant, Edward Y. Osawa, filed a further reply affidavit as follows:

[Title of District Court and Cause.]

State of Washington

County of King—ss.

Edward Y. Osawa, being first duly sworn, deposes and says: That the ship Hikawa Maru upon which he sailed from Japan to the United States, reaching here on November 2, 1941, docked between eight A. M. and nine A.M. on said date. That on the thirty-first day of October, two days before the ship reached Seattle, affiant prepared a written declaration containing a list of all of the articles which affiant was bringing into the United States, which written declaration is Exhibit marked Number One, together with a duplicate thereof. That on the evening of November first affiant delivered the original of said declaration to the ship's purser for delivery by the purser to the United States Customs Agent who boarded the ship at Vancouver, B. C. on said first day of November. That affiant is in- [53] formed and believes that the declaration was delivered by the ship's purser to the United States Customs Officer immediately after the ship left Vancouver, B. C. on the evening of November first. That on November second the said ship berthed at Seattle, Washington, between eight and nine o'clock A.M. That affiant had abandoned his stateroom on said ship before said stateroom was visited by J. W. Stanton, inspector in the Bureau of Entomology and Plant Quarantine. That about nine forty-five Charles T. Takahashi met affiant pursuant to a telegram which affiant sent said Charles T. Takahashi

from Vancouver, B. C. requesting that the said Charles T. Takahashi meet affiants at the ship with \$200.00 in American money for the purpose of paying duty on the articles which affiant was bringing into the United States. That said Charles T. Takahashi was in the immediate presence of affiant from about nine forty-five until after affiant in company with said Charles T. Takahashi left the dock, which was approximately eleven-thirty A. M. That at no time was there an exchange of papers between affiant and said Charles T. Takahashi while affiant and said Charles T. Takahashi were on the dock or in the customs. That the only paper that affiant had during said time was a copy of the list of articles contained in the declaration, which was consulted from time to time by said Charles T. Takahashi in an attempt to locate said lost items of luggage. That said list was arranged and classified according to the luggage or package in which said articles were contained. That considerable time was consumed by reason of the fact that part of the packages were missing, and that a diligent search was made by affiant in company with said Charles T. Takahashi and certain [54] customs officers whose names are unknown to affiant. That at about eleven A.M. one of the customs officers whose name is unknown to affiant first suggested and then directed that affiant's luggage would be sent to the United States Appraiser's Office and there released and directed that affiant could take his brief case and any personal effects that he desired and leave the dock. That up until this time affiant had not seen or had

he been in the immediate presence of either United States Customs Officers A. S. Atherton or A. D. Richards. That when advised by customs officers that affiant might leave, affiant and said Charles T. Takahashi proceeded to leave the dock, affiant carrying his brief case. That then for the first time affiant saw and was restrained by said officers Atherton and Richards and by them taken into custody and searched as described in detail in an affidavit heretofore made by affiant. That affiant and the said Charles T. Takahashi finally left the dock at approximately eleven-thirty A.M.

EDWARD Y. OSAWA

Subscribed and sworn to before me May 5, 1942.

GEO. H. CRANDELL

Notary Public

That on the 6th day of May, 1942, the aforesaid petitions of the defendants, Charles T. Takahashi and Edward Y. Osawa, for the return of their private papers, etc., and their said motion to quash the indictment came on for hearing before the Court upon the showing and countershowing hereinabove set forth, and the Court having read and considered the same, and having listened to the arguments of counsel, took said matters under advisement, [55] and at the same time granted leave to counsel for defendants to file additional showing as to where said defendants were when they met at the time of the arrival of the ship Hikawa Maru.

Accordingly, thereafter, on the 8th day of May, 1942, said defendants served and filed two addition-

al affidavits, one by defendant Takahashi and one by defendant Osawa and submitted the same to the Court, the same being as follows:

[Title of District Court and Cause.]

State of Washington

County of King—ss.

Charles T. Takahashi, being first duly sworn, on oath deposes and says:

That on the morning of November 2, 1941, at no time did affiant board the ship Hikawa Maru. That when affiant reached the dock at which said ship was berthed, Edward Y. Osawa had left the ship and was on the dock.

CHARLES T. TAKAHASHI

Subscribed and sworn to before me May 8, 1942.

GEO. H. CRANDELL

Notary Public

[Title of District Court and Cause.]

State of Washington

County of King—ss.

Edward Y. Osawa, being first duly sworn, on oath deposes and says:

That on the morning of November 2, 1941, affiant had left the ship Hikawa Maru before Mr. Charles T. Takahashi met him. That affiant and the said Charles T. Takahashi met on the dock and were in each other's immediate company until the search

was made by the officers A. S. Atherton and A. D. Richards.

EDWARD Y. OSAWA [56]

Subscribed and sworn to before me May 8, 1942.

GEO. H. CRANDELL

Notary Public

Thereafter, on the 15th day of May, 1942, after considering the two additional affidavits of said defendants, together with the previous showing made by both parties, the Court denied each of said petitions and defendants' motion to quash, and entered the following orders thereon:

[Title of District Court and Cause.]

This matter having come on for hearing on the 6th day of May, 1942, the defendant being present in open Court and represented by his counsel George H. Crandell and Samuel B. Bassett, the Court having heard argument and being fully advised in the premises, it is hereby

Ordered, adjudged and decreed that the petition is overruled and denied.

Done in open court this 15th day of May, 1942.

LLOYD L. BLACK

United States District Judge

Presented by:

GERALD SHUCKLIN

Assistant U. S. Attorney

[Title of District Court and Cause]

This matter having come on for hearing on the 6th day of May, 1942, the defendant being present in open Court and represented by his counsel George H. Crandell and Samuel B. Bassett, the Court having heard argument and being fully advised in the premises, it is hereby ,

Ordered, adjudged and decreed that the petition is overruled and denied.

Done in open court this 15th day of May, 1942.

LLOYD L. BLACK

United States District Judge

Presented by:

GERALD SHUCKLIN

Assistant U. S. Attorney [57]

[Title of District Court and Cause.]

This matter having come on for hearing on the 6th day of May, 1942, the defendants being present in open Court and represented by their counsel George H. Crandell and Samuel B. Bassett, the Court having heard argument and being fully advised in the premises, it is hereby

Ordered, adjudged and decreed that the defendants' motion to quash indictment be, and it hereby is, overruled and denied.

To all of which defendants except.

Exception allowed.

Done in open court this 15th day of May, 1942.

LLOYD L. BLACK

United States District Judge

Presented by:

GERALD SHUCKLIN

Assistant U. S. Attorney

TRIAL

Be it further remembered that on the 29th day of September, 1942, at the hour of 10:00 a. m., the above entitled and numbered cause came regularly on for trial in the above entitled court before the Honorable Lloyd L. Black, one of the Judges of the above entitled Court, sitting with a jury.

The plaintiff appeared by J. Charles Dennis, Esq., United States District Attorney, and Thomas Durham, Esq., Assistant United States Attorney, its attorneys and counsel;

The defendant Charles T. Takahashi appeared by George H. Crandell, Esq., and Samuel B. Bassett, Esq., his attorneys and counsel;

The defendant Edward Y. Osawa appeared by Tracy E. Griffin, Esq., his attorney and counsel.

[58]

All parties having signified their readiness to proceed, a jury was duly impanelled and sworn.

Mr. Dennis, for the plaintiff, made an opening statement to the jury.

Mr. Crandell followed with an opening statement for defendant Takahashi.

Mr. Griffin followed with an opening statement for defendant Osawa.

It was orally stipulated between all the parties that the testimony given upon the previous trial of the cause by Francis Hoague, Fred G. Heins and Frederick Wilhelm, for the Government, and of Mrs. S. Kawaguchi, for the defendants, may be read to the jury on the present trial in lieu of them being present.

ALBERT D. RICHARDS,

a witness called on behalf of the Government, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dennis:

My occupation before April 15, 1942, was Customs Agent in the United States Treasury Department. I was stationed in Seattle and had been in the Customs service a little better than eleven years. I was such Customs Agent on November 2, 1941, and acting in course with my duty. On that date I saw the defendant Takahashi and the defendant Osawa. I was at the Great Northern pier on the arrival of the Japanese Steamship Hikawa Maru. Another Customs agent, Mr. Atherton, was with me and was with me all that day. I saw Mr. Osawa shortly after nine o'clock on the morning of November 2. Mr. Atherton and I were working together within speaking distance and sight of each other.

(Testimony of Albert D. Richards.)

It was at the Great Northern pier that I saw Mr. Osawa.

Q. Now, then, explain what a Custom's baggage enclosure is?

A. For the convenience of Custom's inspection, examining baggage of incoming persons from foreign countries, they set up what is known as an enclosure or baggage enclosure for Customs purposes. All personal baggage is taken from the ship and stacked [59] in tiers under their initials on the pier, and the inspectors in turn take the baggage separately and *go the* place where the baggage is stacked, inspect it and then put a stamp on it so that can be passed from the baggage enclosure, so that the guard on the gate will know the baggage has been inspected.

Inspectors from other Government agents and incoming passengers and persons who have a special permit are allowed within the baggage enclosure. I saw defendant Takahashi within the Custom's enclosure. He was not a passenger on the ship. He was with Mr. Osawa. It was about ten o'clock when I saw Mr. Takahashi and Mr. Osawa together. They were in the baggage enclosure close to the place where Mr. Osawa's baggage had been stacked up on the pier. I was standing close to the door of the reception room, which is in the baggage enclosure, on the pier. Mr. Atherton was either standing with me or close by. I saw Mr. Takahashi and Mr. Osawa carrying on a conversation and then pass some paper back and forth between them. I

(Testimony of Albert D. Richards.)

don't know what the paper was. I kept Mr. Takahashi in my vision, watched him the rest of the time he was on the pier. After Mr. Osawa had arranged for his baggage to be shipped, Mr. Takahashi started to leave the pier. I stopped him, the two men, identified myself as a Custom's agent and requested them to come into the reception room. After going into the reception room I took Mr. Osawa into the washroom, where I searched him, took his briefcase which he was carrying, took certain papers from him, and after I had completed that search I took Mr. Osawa back and took Mr. Takahashi into the washroom where he was likewise searched and certain papers taken away from him at that time. Mr. Atherton was with me.

Q. What did you find in the briefcase? What briefcase was that?

Mr. Crandell: Just a minute. We object to that as incompetent, irrelevant and immaterial, it being a violation of the Constitution.

The Court: Do I understand that you, as attorney for Mr. [60] Takahashi, can object to what was found in Mr. Osawa's briefcase?

Mr. Crandell: I am objecting to the introduction of any evidence for which I made a motion myself. I think I have that right.

The Court: Are you attorney for Mr. Osawa or not for Mr. Osawa?

Mr. Crandell: I am not.

The Court: The objection is overruled.

(Testimony of Albert D. Richards.)

Mr. Griffin: The defendant Osawa objects to the testimony along that line, as to the particular case, as to what he found in the briefcase, on the same ground.

The Court: He may without saying what was in it, the contents, he may merely identify what was found.

Mr. Griffin: May I present one point further, The objection is made upon the ground heretofore presented as to the constitutional rights of the defendant Osawa.

The Court: The objection is overruled, but the witness is directed merely to identify by general description, without setting forth what the contents were, further than a mere general identification.

A. There were a number of files in the briefcase and letters addressed to C. T. Takahashi & Company.

Q. (By Mr. Dennis): Now then did you find certain papers in the possession of Mr. Takahashi at that time?

Mr. Crandell: To which the defendant Takahashi objects as incompetent and immaterial, being personal papers the taking of which was violative of the rights of the defendant Takahashi.

Mr. Griffin: And the defendant Osawa objects upon the same ground, inasmuch as I must assume the papers to identify his part in a conspiracy, in which Mr. Osawa is named as a party.

Mr. Crandell: My authorities are those presented at the [61] time of the motion.

(Testimony of Albert D. Richards.)

The Court: You, as attorney for Mr. Osawa, are objecting to what was found on Mr. Takahashi?

Mr. Griffin: Yes, your Honor.

The Court: The objection of Mr. Osawa is overruled. The objection of Mr. Crandell is likewise overruled.

Mr. Crandell: Exception.

The Court: Exception allowed.

Mr. Griffin: In each instance?

The Court: The same.

Q. (By Mr. Dennis): Referring to plaintiff's Exhibit #1—

Mr. Griffin: That would be for identification, I take it.

Mr. Dennis: I am using, may it please the Court, the same numbers as in the previous trial.

The Court: Will it be for identification.

Mr. Dennis: Yes, of course, but I am using the same numbers.

The Court: Exhibit #1 for identification.

Q. (By Mr. Dennis): I will ask you where you found that if you did find it?

A. I don't recognize that. I don't believe I ever saw that before.

Q. Referring to plaintiff's #1, #2, #3, #4, #5, #6, #7 and #8, I will ask you if you have seen any of them before?

Mr. Crandell: I object to that, and especially to Exhibit #1. The witness says he never saw Exhibit #1.

(Testimony of Albert D. Richards.)

The Court: Objection overruled.

Mr. Crandell: Exception.

A. I don't recall seeing any of these Exhibits.

Mr. Dennis: Referring to plaintiff's Exhibit #10.

Mr. Griffin: I take it, Mr. Dennis, you are still referring to Exhibit #10 for identification? [62]

The Court: It will be understood that all of these exhibits are for identification until the Court admits them in evidence.

Q. (By Mr. Dennis): I will ask you if you have ever seen them before?

A. Yes, sir.

Q. I will ask you where you saw them?

A. Those I took from the person of Mr. Takahashi at the time I searched him, November 2.

Mr. Crandell: The same objection. I wonder if we may not have an objection with an exception to all reference to these items without making it specifically?

The Court: It may be understood that all of the papers which Mr. Richards may testify he took from Mr. Takahashi on the pier are inquired of over your objection that you are taking exception to the admission of any of the—well we will not tackle the admission but it will be understood that you are taking exception to any questions and to the allowance of the witness to answer.

Mr. Crandell: It will save interruption.

The Court: When the exhibits are offered in

(Testimony of Albert D. Richards.)

evidence, if they are, then you will be required to object and except.

Mr. Crandell: I will do that.

Mr. Griffin: May I be considered to be in the same position? I am objecting on the part of Mr. Osawa.

The Court: It will be understood that you are objecting. The Court is not implying that Mr. Osawa has any right to object to what may have been found upon Mr. Takahashi. Your objection will be assumed to run to all of this line of questioning.

Mr. Dennis: Now, may I get the answer?

A. That is one of the papers I found in Mr. Takahashi's pocket at the time I searched him on November 2 at the pier. [63]

Exhibits #11, #12, #13, #14, #15, #16, #17 and #18 are papers that I took from Mr. Takahashi's pocket on November 2 on the pier. At a later date I had a further conversation with defendant Osawa. It was at the King County jail, Seattle, Washington, and I had plaintiff's Exhibits #14, #15 and #16 with me. I asked Mr. Osawa if he had written these letters, and a number of other letters I had in my possession at that time; and when he admitted that he had written them I asked him where he was at the time he had written them and he said he was in Tokyo, Japan. I asked him if he had ever been in Shanghai on the trip he returned from. He said "no"; he had intended to go to Shanghai to book passage to return that way, but being unable to do that, he stayed in Tokyo and

(Testimony of Albert D. Richards.)

had never been to Shanghai during the trip and he returned these letters to Tokyo. He said he mailed the letters to Mr. Takahashi as a progress report.

Mr. Dennis: At this time, may it please the Court, I offer this Exhibit #10 in evidence. I will offer them all in evidence at the same time or each separately, whatever is best to do.

Mr. Griffin: It would save time to offer them #10 to #18.

Mr. Dennis: I offer these Exhibits #10, #11, #12, #13, #14, #15, #16, #17 and #18.

Mr. Crandell: To which the defendant, C. T. Takahashi, makes the basic objection.

Mr. Griffin: To which the defendant Osawa makes the basic objection as well as an objection upon the ground and for the reason that the indictment does not state facts constituting a crime and particularly with reference to Exhibits #14, #15 and #16, being letters dated July 5, July 12 and July 15, upon the ground and for the reason that they are incompetent, irre- [64] levant and immaterial and inadmissible as proving, or tending to prove, a conspiracy as charged in the indictment, a conspiracy made the year 1940 at a time when there was not in existence any administrative rule having the effect of law.

The Court: #14, #15 and #16 dated in July, 1941, under the testimony admitted to have been written by Mr. Osawa, the defendant, under the testimony, returned months after the regulation went into effect, are admitted, and the objections

(Testimony of Albert D. Richards.)

of Mr. Osawa are overruled. The objection of Mr. Takahashi is overruled.

Mr. Griffin: Exception.

Mr. Crandell: Exception.

The Court: The other Exhibits, #10, #11, #12, #13, #17 and #18 are admitted in evidence. The objection of Mr. Takahashi is overruled.

Mr. Crandell: Exception.

The Court: The objections of Mr. Osawa are overruled. The exception to each defendant and to each ruling and as to each exhibit are allowed. I think I have covered all the offers.

The Court: So there will be no question, Exhibits #10 to #18 inclusive are admitted in evidence and the objections are overruled and the exceptions allowed.

Various letters marked Plaintiff's Exhibits #10 to #18 inclusive admitted in evidence.

The letters of July 5 and July 12, 1941, were read to the jury.

The witness, Mr. Richards, is temporarily withdrawn.

E. R. STINE,

a witness called on behalf of the Government after having been first duly sworn, testified as follows:

[65]

Direct Examination

I am Superintendent of the Western Union Telegraph Company in Seattle.

(Testimony of E. R. Stine.)

Referring to plaintiff's Exhibit #22, that is a record of cable registration for C. T. Takahashi & Company. The word "N E W Y R" on one corner is a contraction that is used as a cable address by C. T. Takahashi & Company. By "cable address" is meant a code address that they register with us and we have the key to that code address so that anything that reaches Seattle addressed to "N E W Y R" would be delivered to C. T. Takahashi & Company.

Exhibit #22 admitted in evidence without objection.

Record of cable registration admitted in evidence and marked Plaintiff's Exhibit #22.

Referring to plaintiff's Exhibit #23, that is a record of cable registration for China Import and Export Company, Seattle. It is a code letter meaning any cables addressed to "C I E C O" here would be delivered to China Import and Export Company.

Exhibit #23 offered in evidence.

Mr. Crandell: When was this authorized?

A. The first registration was October 15, 1927.

Plaintiff's Exhibit #23 admitted without objection.

The code registration admitted in evidence and marked Plaintiff's Exhibit #23.

Q. (By Mr. Dennis): Referring to plaintiff's Exhibit #5, what is that?

A. That is the original of a cable delivered to us in San Francisco, addressed to "N E W Y R", Se-

(Testimony of E. R. Stine.)

attle, originating in Tokyo. It was sent June 27 and was delivered by our office to [66] C. T. Takahashi & Company on the morning of June 28.

Referring to plaintiff's Exhibit #6, that likewise is the original of a cable turned over to us by the RCA in San Francisco from Tokyo, addressed "N E W Y R", which is C. T. Takahashi & Company, Seattle. It was delivered by our office to C. T. Takahashi & Company on June 28.

Referring to plaintiff's Exhibit #7, that is a cable from Tokyo, sent on July 5 to C. T. Takahashi & Company, Seattle, and delivered on July 5.

Referring to plaintiff's Exhibit #8, that is a cable from Tokyo, sent on July 8 to C. T. Takahashi & Company, Seattle, and delivered to them on July 8.

Plaintiff's Exhibits #5, #6, #7 and #8 offered in evidence.

Mr. Griffin: The defendant Osawa objects as incompetent, irrelevant and immaterial and so far as he is concerned there is no evidence in this case that any of these exhibits were sent from Tokyo by the defendant Osawa or that he had any knowledge thereof.

The Court: The objections are overruled.

Mr. Griffin: Exception.

Cablegrams previously identified admitted in evidence and marked Plaintiff's Exhibits #5, #6, #7 and #8.

(Testimony of E. R. Stine.)

Cross Examination

By Mr. Bassett:

In reference to Exhibits #22 and #23, "N E W Y R" is the code name of C. T. Takahashi & Company, and "C I E C O" is the code name for the China Import and Export Company. It is not uncommon for firms engaged in the import and export business to employ code names of that type. The purpose of using code names [67] is to keep down expenses.

By Mr. Griffin:

Code books are published like dictionaries. We do not carry all of the code books. There are probably fifteen such books in general use and we have probably five or six. Anyone having a book containing the code used can decipher the cablegrams.

Redirect Examination

By Mr. Dennis:

These codes are also found in the library.

Referring to plaintiff's Exhibit #24, that is an after-hour delivery instruction from the China Import and Export Company, also the C. T. Takahashi Company.

Exhibit #24 admitted in evidence.

After-hour delivery instructions of China Import and Export Company and C. T. Takahashi & Company admitted in evidence and marked Plaintiff's Exhibit #24.

(Witness excused.)

Mr. Bassett: Mr. Dennis and I have stipulated that the word "gunbu" means military authorities.

The Court: The jury will understand that in the letters that they have heard the word "gunbu" is used, that that means "military authorities".

Mr. Dennis: I will read the letter of July 16, 1941.

(Thereupon Mr. Dennis read the exhibit to the jury.)

Mr. Dennis then read to the jury the translation of the confirmation of telegrams from Mikuni Shoko Company Limited to "N E W Y R", C. T. Takahashi & Company, Seattle, Washington, being Exhibit #10. [68]

Mr. Dennis then read Exhibit #11, being a translation of telegram sent June 28, 1941, by Mikuni Shoko Company Limited, Tokyo, Japan.

Mr. Dennis then read Exhibit #12, being confirmation of telegram Mikuni Shoko Company Limited, Tokyo, Japan, to "N E W Y R" Seattle, sent July 5, 1941.

Mr. Dennis then read Exhibit #13, dated July 8, 1941, to "N E W Y R", Seattle.

ALBERT D. RICHARDS,

recalled after having been previously sworn, testified as follows:

Direct Examination

Mr. Dennis: I will ask you what Plaintiff's Exhibit #9 is, and where you found it?

(Testimony of Albert D. Richards.)

A. This is a letter which was taken from a briefcase carried by Mr. Osawa at the time he was searched on the morning of November 2 at the pier. After the search Mr. Takahashi and Mr. Osawa were allowed to proceed from the pier. I next saw Mr. Takahashi about ten o'clock on the evening of November 2 at his place of business, 212 Fifth Avenue South, Seattle. At this time Mr. Osawa was with Mr. Takahashi and Mr. Atherton accompanied me to this place of business. I asked Mr. Takahashi if he would come over to the office of the Supervising Custom's Agent, where Mr. Atherton and I would like to talk to him. He stated that he would, and he and Mr. Osawa came to the office of the Supervising Custom's Agent at 217 Federal Office Building. Mr. Osawa was not present at the time we talked to Mr. Takahashi. Only Mr. Atherton, Mr. Takahashi and myself were present.

Q. What was said by Mr. Takahashi and what was said by you, and what was said by Mr. Osawa and Mr. Atherton?

Mr. Griffin: I object as incompetent, irrelevant and immaterial and not binding on the defendant Osawa. [69]

The Court: The jury will be instructed that any conspiracy that existed terminated on the dock at the time of the search on November 2, 1941, and therefore any conversation by any defendant will be considered by the jury as against that particular defendant. And so any statement by Mr. Takahashi

(Testimony of Albert D. Richards.)

after the morning of November 2, 1941, made in the absence of Mr. Osawa is only to be considered as against Mr. Takahashi.

The jury will be further instructed that a conspiracy is a charge of a criminal partnership; and if the jury is convinced, after it has heard all the evidence, beyond a reasonable doubt that a conspiracy did exist as charged in the indictment, and is further convinced beyond a reasonable doubt that the defendants, or either of them, were members of that conspiracy, then any statements made by any member of the conspiracy, even in the absence of such defendant, would be binding upon the defendant, upon the theory that one is a member of a partnership he is liable for what the partner says or does.

Mr. Griffin: I will take an exception, if I may, for the last portion of your Honor's statement as to the binding effect of any statement after the separation in time, the absence of the alleged co-conspirator.

The Court: The jury will further understand that if conversations take place with one defendant in the presence of another, after the search on November 2, 1941, then the jury will be later instructed as to what the rule is as to such conversations.

Mr. Takahashi said that he was in the import and export business and that the main commodities that he had exported were scrap steel, scrap rubber, scrap bags and used oil tanks to the Orient. I asked him

(Testimony of Albert D. Richards.)

at that time if he had ever had applications for export licenses rejected and he said he had a [70] number rejected. I asked him where these applications were and he said in his office at 215 Fifth Avenue South, and he agreed at that time to get me the rejected applications the next day.

I asked him also why he used the name of China Import and Export Company as well as C. T. Takahashi & Company. He stated that in doing business with China or any persons who might be prejudiced against the Japanese, that he would use the name of China Import and Export Company, thereby getting around the name "Takahashi" which was Japanese.

To the best of my recollection there was no mention made of the three oil tanks on the night of November 2. He did mention that he shipped a number of used oil tanks prior to that time, to Japan.

The next time I saw Mr. Takahashi was about ten o'clock on the morning of November 3. There was present Mr. Atherton, Mr. Takahashi and Mr. Masuda, who was Mr. Takahashi's attorney.

Q. What conversation did you have at that time?

Mr. Griffin: Same objection.

The Court: Same ruling.

A. I asked Mr. Takahashi at that time if I might see the rejected export applications which he had told me the night before were in his office. He brought out a group of rejected applications for various types of merchandise and among the ap-

(Testimony of Albert D. Richards.)

plications I saw one dated April 16 for three new, dismantled steel 80,000-barrel storage tanks, and another one dated on July 16 for three dismantled storage tanks, the one on April 16 headed the consignee as Mikuni-Shoko Company of Tokyo, Japan, and the one on July 16 headed the Hua Hsin Company of Shanghai, China, as consignee.

I asked Mr. Takahashi if these were the same three tanks [71] in the rejected application of April 16 and the rejected application of July 16, and he stated that they were; that at the time the application had been rejected by the State Department he had gotten a new customer in China, the Hua Hsin Company, and he had resold the tanks to the Hua Hsin Company, and that there was no connection between the Mikuni-Shoko Company and the Hua Hsin Company of Shanghai.

Referring to plaintiff's Exhibit #21, that is one of the rejected applications given me by Mr. Takahashi on the morning of November 31, 1941.

Referring to plaintiff's Exhibit #19, that is the rejected application of C. T. Takahashi & Company for permit to export three dismantled steel storage tanks and accessories for re-erection purposes, given me by Mr. Takahashi on the morning of the 3rd of November.

Plaintiff's Exhibit #19 offered in evidence.

Mr. Griffin: The defendant objects on the ground that the same is incompetent, irrelevant and immaterial and has no tendency to prove, as shown on the face of the document itself, any connection of the

(Testimony of Albert D. Richards.)

defendant Osawa with any charge laid in any count of the indictment.

The Court: Objection overruled.

Exhibit #19 is admitted.

The application admitted in evidence and marked Plaintiff's Exhibit #19.

Mr. Dennis: I now offer in evidence at this time #21.

Mr. Griffin: I have the same objection to #21 as just stated to #19.

The Court: Objection overruled and Exhibit #21 is admitted.

Mr. Griffin: Exception to this ruling, please.

The Court: Exception allowed.

Application admitted in evidence and [72] marked Plaintiff's Exhibit #21.

Mr. Dennis: Referring to plaintiff's Exhibit #19, I will ask you if anything was said in regard to certain writing then, at that time?

A. Yes. In looking over this application, after the name of the applicant on Exhibit #19, which is typewritten in "C. T. Takahashi" there is written in pencil a change in there and where the name Mikuni-Shoko Company is on the application. The writing is rather dark. I asked Mr. Takahashi why the pencil notation all the way through,—he stated after that application had been rejected and he got the new customer in Shanghai he used the application of April 16 as a guide and had his stenographer write in the name of the purchaser and the new ad-

(Testimony of Albert D. Richards.)

dress on this application; that she took the new application and filled it out accordingly using pencil notation rather than the typewritten notation.

Q. And referring to the one at the top of the page there was that mentioned?

A. He stated the reason he had written "China" in typewriting in—inserting the name of the country of destination in the first application in typewriting "Japan" he stated the new application was in China so therefore he had to put in the word "China" in the new application when it was made out.

(Thereupon Mr. Dennis read Exhibit #19 to the jury.)

Q. Was there any talk with Mr. Takahashi in regard to the application for the license dated July 16, 1941?

A. Yes. One of the main things that I talked to him about was why Leo Nye Sing had signed the application rather than Takahashi. He stated that his new customer was in China and that he had taken for granted, since the State Department had rejected his application of April 16, that the United [73] States had embargoed all tank shipments to Japan, so he got this customer in China and asked Leo Nye Sing, who is known by the American name Willie Leo to sign the application to make it look thoroughly Chinese. He said the new customer was Hua Hsin Company, Shanghai, China, and he said Leo Nye Sing was a Chinese friend of his, that he

(Testimony of Albert D. Richards.)

had known him for a long time and that he had him sign this particular application. He said that the application, Exhibit #21, had been rejected by the State Department, and Exhibit #19 had also been rejected by the State Department.

I had another conversation with Takahashi, one on the 3rd of November in the presence of Mr. Atherton and Mr. Masuda, relative to this application. Mr. Atherton, Mr. Takahashi, Mr. Masuda and myself were present.

Q. I will ask you what was said to Mr. Takahashi and what he said to you?

Mr. Griffin: The same objection as heretofore.

The Court: The same ruling.

Witness continuing: At that time I asked Mr. Takahashi if there was any connection between the Mikuni-Shoko Company of Tokyo, Japan, and Hua Hsin Company of Shanghai, China, and if the three tanks in both applications were identical. He stated there was absolutely no connection between the Hua Hsin Company in China and the Mikuni-Shoko Company of Tokyo. He volunteered at that time the information that he did quite a bit of his business with Japan by long distance telephone, that it cost \$8.00 a minute to talk to Japan, and it took so long to get over the Japanese formalities before getting down to business on his own that his telephone bills would run as high as \$1,000.00 a month long distance to Japan. He stated that he had shipped to Mikuni-Shoko Company prior to that time some thirty- [74] five dismantled used oil storage tanks to

(Testimony of Albert D. Richards.)

Japan, that the only business he had ever done with Mikuni-Shoko Company was in oil, steel and tanks. To the best of my recollection, I believe he stated he received the order for the new steel storage tanks the 1st of December, 1940, and at that time the order was for eleven storage tanks but due to priorities on steel and other obstacles he was able only to place the order for three tanks and that he had placed this order through the Sonken Galamba Supply Company of Kansas City, Kansas, who in turn had placed the order with the Graver Tank Company of East Chicago, Indiana. I asked him how the tanks were to be paid for and he stated through a letter of credit which he had received from Mikuni-Shoko Company in payment of the thirty-five used storage tanks; that he had accumulated a surplus of some \$71,000.00, which was to be applied on the payment of the three new storage tanks. I do not recall having had any conversation with Edward Y. Osawa other than the one on the pier. I asked Mr. Takahashi to allow me to see some correspondence. That was on the next occasion between November 3 and the latter part of November. He handed me certain correspondence. The correspondence was taken to my office, where photostats were made and the correspondence was returned to Mr. Takahashi.

Mr. Dennis: These may be identified as plaintiff's Exhibit #34 for identification.

Referring to plaintiff's Exhibit #34, I have never seen the originals. The original is in Japan

(Testimony of Albert D. Richards.)

presumably and this is a photostat copy of the copy of the original letter which was in the files given to me by Mr. Takahashi. I received the carbon copy from the files and had that photostated.

Referring to Government's Exhibit #35, this is a photostatic copy of the carbon copy of a letter received from one of the [75] files given me by Mr. Takahashi at his office. After the photostatic copies were made the originals were returned to Mr. Takahashi.

Plaintiff's Exhibits #34 and #35 admitted in evidence.

The letters admitted in evidence and marked Government's Exhibits #34 and #35.

(Thereupon Exhibits #34 and #35 were read to the jury by Mr. Dennis.)

Mr. Dennis: May it please the Court, may I say this it has been agreed that the two words which appear in these letters have certain meaning. It is stipulated between the Government and defendants that the word "Chigun", however it is pronounced, stands for "Navy" and the word "Rikugun", however it is pronounced, means "Army".

Mr. Crandell: That is the stipulation.

Cross Examination

By Mr. Crandell:

When I talked with Mr. Takahashi I asked him if the three tanks which were described in Exhibit #19 were the same identical tanks as described in Exhibit #21 and he said that they were the same

(Testimony of Albert D. Richards.)

tanks, and I investigated and found that he had told the truth. I also asked him about where these tanks were manufactured and he told me it was by the Graver Tank Company, East Chicago, and I investigated and found that was true. He told me that the tanks had been ordered through the Sonken Galamba Supply Company, Kansas City, Kansas, and I investigated that and found it was true. He told me that he had previously been engaged in the export and import business for along time and I investigated and found that was the truth. He told me that he had rather recently an order for some thirty-two or [76] thirty-five tanks and I investigated that statement and found it was true.

Referring to Exhibit #19, when I saw the word "China" written in pencil I was naturally curious.

Exhibit #19 handed to the jury for scrutiny.

When I asked Mr. Takahashi regarding the pencil marks he assured me that this was a form he had used in a former application that had been rejected and that he had taken this rejected form and told his girl in his office what changes to make in preparing a new application.

Cross Examination

By Mr. Griffin:

I never met or talked to Mr. Osawa prior to November 2, 1941. On November 2 and on November 3 I met with Mr. Takahashi and his attorney, Mr. Masuda, in Takahashi's office. He there advised me that he had had several applications rejected by the

(Testimony of Albert D. Richards.)

State Department. I inquired for, and he brought out, his files. He had a group of ten or twelve rejected applications which he gave me. He consulted with his attorney before he gave them to me and his attorney, Mr. Masuda, told him he saw no objection in allowing me to take the applications. No threat had been made by me at this time. It was some time between November 3 and November 15 that Exhibits #34 and #35 were delivered to me. I refer, of course, to carbon copies from which these photostats were made. There were no threats on my part at that time. In addition to these Exhibits #34 and #35 there was also given to me three files, which I took to my office and examined, and certain papers in those files were photostated. I inquired from Mr. Takahashi why he had used the name "China Import and Export Company", and was curious why they had not used the name "C. T. Takahashi & Company". [77]

Referring to Exhibit #19, Mr. Takahashi explained that the name "Ewers" on it was an attorney in Washington, D. C., who had drawn the application. I did not check that statement, because I believed it was true. I investigated and found that Mr. Takahashi had been using the name "China Import & Export Company" since January 20, 1927, on which date he had registered it in the Clerk's office of the Superior Court of the State of Washington for the County of King, as by law required.

(Witness excused.)

WILLIE LEO,

a witness called on behalf of the Government, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dennis:

Q. What is your name, please?

A. Willie Leo; Leo Nye Sing, the Chinese name.

Q. Your Chinese name is what?

A. Leo Nye Sing.

I was in the import and export business from 1935 up to the time of the war. I ceased that business the first of this year. From April 1 to August 31 I rented a service station. Now I am a coppersmith trainee. The name of my import and export business was "China Mutual Importing Company". It has no connection with the China Import and Export Company. I had known the defendant Takahashi since between 1925 and 1926.

Referring to Exhibit #21, that looks like my signature. I have no recollection of any dealing in steel tanks. I have never had any dealings with Hua Hsin Company, 320 Szechuen Road, Shanghai, and don't know of them. I had no dealings with three complete new steel dismantled storage tanks and accessories for [78] erection purposes to be shipped to the Hua Hsin Company, and don't know anything about it. I am not a member of the China Import and Export Company. There were some arrangements made between Mr. Takahashi and myself on a commission basis, but not in regard to these three tanks. I only remember of signing one appli-

(Testimony of Willie Leo.)

cation for Mr. Takahashi, which consisted of 25,000 ball bearings.

Referring to plaintiff's Exhibit #20, that is the application that I remember signing. That was destined for Shanghai instead of Manchuria, as I recollect. When I signed the application Mr. Takahashi and I were both busy and I was told by Mr. Takahashi that it was to be destined to Shanghai. I had a conversation with Mr. Takahashi about how much I was to receive. It was three per cent of the net profits.

Cross Examination

By Mr. Crandell:

It was about 1937 that I made the first arrangement with Mr. Takahashi to take part in his China export business. Exhibit #20 bears my signature. I would say that I am positive that it is my signature.

I would also say that Exhibit #21 also bears my signature, but I have no recollection of signing it.

Q. Then why did you say it was your signature, if you can't remember?

A. Well, I don't remember such items.

Q. You don't remember such an item?

A. That is signing such an item.

Q. You mean you don't remember of a transaction involving the sale of three tanks?

A. That is right.

Q. Three tanks that are valued at about \$90,000.00, where [79] you were to get three per cent

(Testimony of Willie Leo.)

commission on the transaction? You don't remember that at all? A. No, I don't.

At the time of defendant's arrest I was interviewed by officers Atherton and Richards in their office. Mr. Atherton did not tell me at that time that if I were a party to that transaction I would be arrested. I believe it was a little bit later that he told me that I would be implicated in a conspiracy case. I don't remember whether they said I would be involved at the same time they were showing me the application (Exhibit #21) or not. I didn't believe the officers when they told me, in substance, that if I were involved in this transaction relating to the three tanks I would be involved in a conspiracy charge. I thought they were fooling. I didn't exactly deny to the officers that I ever seen Exhibit #21. I said to both Mr. Atherton and Mr. Richards that it was my signature. I did not say to them that I had signed it without knowing what it was. I told them that it looks like my signature, but I didn't recall signing for an application for three tanks.

(Witness excused.)

Mr. Dennis: The next will be the reading of these depositions of these former witnesses.

The Court: All right. You may proceed. I suggest for the ease of reading, you may make some one a substitute for the witness. It will be easier for the jury to follow.

The jury may be advised that this is a typewritten

copy of the testimony of the witness Francis Hoague previously taken in this case. Francis Hoague apparently is not available and it has been stipulated between the parties that such testimony may be read at this time. Mr. Durham will impersonate Francis Hoague. The jury will understand, I guess, what that means. [80] They are to try to imagine that Mr. Durham is Francis Hoague.

(The deposition, in the nature of testimony given at the former trial, was then read as follows:)

FRANCIS HOAGUE

was called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

My name is Francis Hoague. I reside at Arlington, Virginia. I am in the Office of the Information Section of the Board of Economic Warfare. I have brought with me certain official files and records of my department. These records formerly belonged to the Department of State, and on September 25 were transferred to the Board Defense Board.

Plaintiff's Exhibit #29, parts 1 to 5, are official records of the Board of Economic Warfare.

I brought records concerning the China Export and Import Company and C. T. Takahashi & Company.

Mr. Dennis: I offer Exhibit #29 in evidence upon the present trial.

(Deposition of Francis Hoague.)

The Court: Parts 1, 2 and 3 of Exhibit #29 are admitted. Parts 4 and 5 are rejected.

I brought with me in relation to the China Export and Import Company only the application for an export license to ship three tanks, and also the application of C. T. Takahashi to export tanks to Japan.

The Court: The jury will now understand that Mr. Durham has become someone else, Fred G. Heins.

(The testimony of Fred G. Heins was read to the jury as follows:)

FRED G. HEINS,

was called as a witness on behalf of the plaintiff, being first [81] duly sworn, testified as follows:

Direct Examination

My name is Fred G. Heins and I reside in Wood Acres, Maryland. I am at the present time Acting Assistant Chief of the Commodity License Division of the Board of Economic Warfare. I was formerly in the State Department, Head of the Iron and Steel Section in the Division of Controls. My duty was to examine applications for licenses to export iron and steel and to take action thereon.

Referring to part #1 of Exhibit #29, I acted on that application. Referring to symbols HT-26-R, HT is the symbol for the tanks, 26 is the number for that particular rejection, and the R indicates it was

(Deposition of Fred G. Heins.)

a rejection. The initials "FGH" indicated that I rejected it.

Cross Examination

By Mr. Crandell:

The rejection is dated July 25, 1941, and at that time we did issue permits to export similar products to China.

Referring back to April 24, when there was a rejection for a permit to ship to Japan, I cannot say whether at that time we did issue permits for the shipment of similar products to Japan to other American concerns, because I was not employed in the Department until about May 1.

Exhibits #1, #2, #3 and #4 were offered in evidence.

The Court: Exhibits #1, #2, #3 and #4, if not already admitted, are now admitted.

(Witness excused.)

Cablegrams admitted in evidence and marked Plaintiff's Exhibits #1, #2, #3 and #4.

A. S. ATHERTON,

a witness called on behalf of the [82] Government, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dennis:

My name is A. S. Atherton. I am a United States

(Testimony of A. S. Atherton.)

Customs Agent, and was such on November 2, 1941, located in Seattle.

On the morning of November 2, 1941, I was on the Great Northern dock in Seattle. At that time I saw defendants Charles T. Takahashi and Edward Y. Osawa. I saw Osawa and found that he was a passenger coming in on that ship, the Japanese Motorship "Hikawa Maru", which had arrived here that morning. A little while after I saw him I observed the defendant Takahashi in the baggage enclosure on the dock in company with Osawa. They were talking together. I observed them for some time thereafter, and about 10:30 or a quarter to eleven they started to leave the dock. That morning I was accompanied by Customs Agent Richards. When the two defendants started to leave the dock we stepped up and introduced ourselves as Customs Agents, and took them into the waiting room, which adjoins the baggage enclosure. At that time Mr. Takahashi told us his name and the fact that he was the proprietor of C. T. Takahashi & Company and also the China Import and Export Company, and said that he had come down to meet Mr. Osawa, who was his Manager, and who had returned on this ship.

We left Mr. Takahashi in the waiting room and took Mr. Osawa into the adjoining washroom, where he was searched. And after we searched Mr. Osawa, he was taken out in the waiting room and Mr. Takahashi was taken into the washroom and searched.

The City of Seattle was the port of entry of the boat to the United States.

(Testimony of A. S. Atherton.)

Upon the search of Mr. Osawa I found some documents on his [83] person. Exhibit #9 was taken from Mr. Osawa's briefcase.

Exhibit #9 was offered in evidence.

Mr. Griffin: To which the defendant Osawa objects, and particularly upon the basic objection heretofore made upon the constitutional grounds.

Mr. Crandell: Our objection would be the fact it was not a matter that was in our possession or that we can be charged with. In other words, they took something off a stranger to us.

The Court: After argument, the Court will reserve a ruling as to Exhibit #9.

The Clerk: Government's Exhibit #36 marked for identification.

Mr. Dennis: Referring to Government's Exhibit #36, I will ask if you have seen that before?

A. That was in Mr. Osawa's briefcase at the time I have described, and obtained by me at that time during my search.

Mr. Dennis: I offer Exhibit #36 in evidence.

Mr. Griffin: The defendant Osawa objects upon the basis of the objection heretofore made; and, second, that it is hearsay so far as he is concerned.

The Court: The ruling will be reserved.

Q. (By Mr. Dennis): Referring to plaintiff's Exhibit #10, I will ask you if you have seen that before?

A. Yes. This was taken from the defendant Takahashi November 2.

Q. And referring to plaintiff's Exhibit #11?

(Testimony of A. S. Atherton.)

A. The same answer.

Q. Referring to plaintiff's Exhibit #12?

A. The same.

Q. Referring to plaintiff's Exhibit #13?

A. The same. [84]

Q. Referring to plaintiff's Exhibit #14?

A. The same answer.

Q. Referring to plaintiff's Exhibit #15?

A. The same.

Q. Referring to Plaintiff's Exhibit #16?

A. The same answer.

Q. Plaintiff's Exhibit #17? A. The same.

Q. And plaintiff's Exhibit #18?

A. The same answer.

Referring to plaintiff's Exhibits #10, #11, #12 and #13, I consulted a code book, the duo code and looked up the code words listed on these exhibits, and I found the translation to be as given on these code exhibits.

Referring to plaintiff's Exhibit #15, I had a conversation in regard to that with Edward Y. Osawa in the King County jail. And also in regard to plaintiff's Exhibits #16 and #14. And at that time I asked him if he had written these letters and he said that he had. Mr. Richards was with me, and I asked him where he was when he wrote them and he said he was in Tokyo, Japan. We asked him to whom he had sent them and he said to C. T. Takahashi at Seattle. After we had searched the defendants and had the conversation on the dock we removed several letters from the pocket of the

(Testimony of A. S. Atherton.)

defendant Takahashi and from the person of the defendant Osawa, as well as letters from his briefcase, and after some little talk on the pier, then left the dock.

Q. And when did you next see the defendant Takahashi?

A. Accompanied by Mr. Richards, I saw both defendants again that day about ten o'clock at night at the office of C. T. Takahashi, which was at 212 Fifth Avenue South, in this City. At that time we requested them to accompany us to our office [85] in the Federal Office Building, which they did. And upon arrival there Mr. Osawa was set in one room while we talked with Mr. Takahashi in another room, not within the hearing of Mr. Osawa. We asked Mr. Takahashi regarding his imports and exports, and among other things he told us that he had been engaged in the business of exporting commodities consisting of machinery, tanks, some lumber, gunny sacks, old rubber tires, old automobile bearings and some other things. We asked him in regard to the China Importing and Exporting Company. He stated that he normally did business under the name of C. T. Takahashi and Company, but whenever he dealt with any one who might have a prejudice against a Japanese name, he employed the other title of China Import and Export Company; and at times when using that name, he would secure a friend of Chinese descent named Willie Leo to sign papers for him. In regard to some of his exports he stated that there had been rejections of

(Testimony of A. S. Atherton.)

some of his applications for a license to export. We asked him if he had those rejections and he said that he had a file of them. Mr. Richards and I asked him if we might see that file. He said if we would come to his office the next morning, November 3, 1941, he would show the file to us. The next morning we went to his office and at that time he was accompanied by Mr. Thomas Masuda, who was then his attorney. The four of us had some discussion.

Q. (By Mr. Dennis): Referring to plaintiff's Exhibits #19, #20 and #21, I will ask if you have seen those before?

A. They were contained among other rejection applications for licenses for export. I made a request to take them and Mr. Takahashi acceded to the request.

With reference to plaintiff's Exhibit #21 and #19, we had a conversation with C. T. Takahashi at the same time in regard to these two exhibits. Mr. Richards asked Mr. Takahashi if the [86] tanks listed on Exhibit #21 were the same three tanks as those listed on Exhibit #19, and Mr. Takahashi said "yes, they were the same three tanks". He was then asked if the consignee on Exhibit #25, which was given as Hua Hsin Company of Shanghai, China, had any connection with the Mikuni-Shoko Company of Tokyo, which was given as consignee on September 19. Mr. Takahashi said there was no connection at all. He said that when he had made the application on April 16, 1941, Exhibit #19, and it had been returned from Wash-

(Testimony of A. S. Atherton.)

ington rejected he had gone out and got a new customer, which was the Hua Hsin Company of Shanghai, China.

With reference to plaintiff's Exhibit #21, he was asked who Leo Nye Sing was and he said he was Willie Leo whom he had described to us the night before in our office. As a reason for Leo Nye Sing signing that application, he said the applicant being named in this case as the China Import and Export Company he had secured Leo Nye Sing to sign it to give the appearance of a thoroughly Chinese concern. He said nothing about compensating Leo Nye Sing, except that he had done favors for Leo before. We talked with the defendant Takahashi, with Mr. Masuda, his counsel, at his place of business, practically every day for the next week. We obtained no further papers from him during that period, but in the following November we got other papers from him. I borrowed papers at frequent intervals. I would borrow some papers and he would give them to me and I would take them to the office, examine them and bring them back, and he would give me some more. That occurred two or three times. Of some of the papers that I thought important I had a photostat copy made.

The Court: I am advised that Leo Nye Sing is present and is available. [87]

Mr. Crandell: I would like to cross examine him in reference to one thing, but I wish to disclose the purpose in the absence of the jury.

(Testimony of A. S. Atherton.)

The Court: The jury may be excused for this reason.

(The following proceedings were had in the absence of the jury):

Mr. Crandell: It has come to my attention that Mr. Leo Nye Sing has been registered with the Customs Department as the agent of the China Import and Export Company and I want to examine him on that for two reasons: First to disclose that registration; second, it goes to his credibility. That was brought to my attention only this morning.

The Court: You may have the privilege of cross examination.

(Thereupon the jury returned into court.)

Q. (By Mr. Dennis). Mr. Atherton, when you met the defendant Osawa in the County jail, did you have any talk with him about whether he had been in Shanghai or not?

A. I asked him if he had been in China on the trip in question and he said that he had not. He said he left Seattle about March 7, 1941, and had gone to Japan and from there he had made a trip over into Manchukuo and from there back to Japan and had returned from Japan to Seattle on the trip in question, but he had not gone to Shanghai. Going back to Charles T. Takahashi, I talked to him relative to telephoning. That was about November 12. Mr. Richards and I were together and Mr. Masuda accompanied Mr. Takahashi. Takahashi said that he had bought thirty-two old storage tanks

(Testimony of A. S. Atherton.)

over in Montana and these had been dismantled and he had sold them to the Mikuni-Shoko Company of Tokyo, Japan, and had shipped them over there. After a period of time following, along in December, 1940, he had received an order from the Mikuni-Shoko Company for eleven [88] new storage tanks, but that he had been unable to fill that order by reason of the shortage of material, or possibly priorities, or some such things, so the order had finally gotten down to three tanks instead of eleven, and they had given this order to the Galamba Supply Company in Kansas City, Kansas, which concern in turn had them built by the Graver Tank Company of East Chicago, Indiana, and that during the negotiations for these tanks some of the correspondence had been by letter with the Mikuni-Shoko Company in Tokyo, some by cable and some over the long distance telephone, and in that connection he said that the toll on the long distance telephone was \$8.00 a minute and it ran the bill pretty high on account of the people on the other end taking so much time over the formalities before they could get down to business, and that his telephone bill often was \$1,000.00 a month. He also said that prior to the completion of these three tanks he had received through various letters of credit through Mikuni-Shoko Company some \$71,700.00 to apply in payment of them, and that along in January or February, at any rate prior to the completion of the tanks in March, he had sent his Manager, Osa-wa, to Washington, D. C. in an effort to secure a

(Testimony of A. S. Atherton.)

license to export them, and that following his dispatch of his Manager Osawa to Washington he had sent also a man by the name of Shenker of Portland, Oregon, to Washington, on the same mission.

Cross Examination

By Mr. Crandell:

Q. Did Mr. Takahashi tell you there had been an attempt to sell certain tank equipment in Mexico? A. Yes.

Q. And did he tell you that when he found the Mexican firm with whom he was dealing was on the black list of the [89] United States that he immediately cancelled his contract with that company?

A. No. He said he had sent a telegram cancelling that contract.

Telegram marked defendants' A-6 for identification was offered in evidence.

Mr. Dennis: No objection whatsoever.

The telegram was admitted in evidence and marked Defendant's A-6

(Exhibit A-6 was read to the jury by Mr. Crandell).

Q. (By Mr. Crandell) You had in your possession also, Mr. Atherton, the contract and letters of credit, together with the documents, or copies of the documents, that were sent to the State Department, pertaining to this contract between Mr. Takahashi's Company and this Mexican Company, didn't you? A. Yes.

(Testimony of A. S. Atherton.)

Mr. Crandell: I ask that these be marked, respectively, Exhibit 3-A, 4-A and 7-A, using the same marks as in the previous trial.

They were so marked.

Exhibit 3-A, 4-A and 7-A admitted in evidence.

The documents admitted in evidence and marked Defendant's exhibits 3-A, 4-A and 7-A.

The documents were read to the jury by Mr. Crandell.

Mr. Kakahashi said that he had a telegram from the Mexican Company which caused him to cancel the contract. I stuck that telegram in my pocket.

Q. I hand you herewith exhibit marked A-5 for identification and ask if that is the telegram?

A. Yes. [90]

Exhibit A-5 admitted in evidence.

The telegram was admitted in evidence and marked Defendant's Exhibit A-5.

(Exhibit A-5 was read to the jury)

I watched Mr. Osawa until he left the dock and Mr. Takahashi as well. I was suspicious of Mr. Osawa because that letter, Exhibit A-1, had been called to my attention.

Exhibit marked A-1 admitted in evidence.

The letter admitted in evidence and marked Defendant's Exhibit A-1.

I was advised that Mr. Osawa was connected with Exhibit A-1.

(Exhibit A-1 was read to the jury by Mr. Crandell)

(Testimony of A. S. Atherton.)

My suspicion of Mr. Osawa was aroused because I found in the letter that he was bringing in six pairs of silk stockings. When passengers arrive in a foreign port they are required to make a declaration.

Q. Now, I hand you herewith Exhibit marked A-2 for identification and ask if that is the original official declaration filed by Mr. Osawa declaring goods that he brought in on that trip?

A. I know that it was made by Mr. Osawa to the Customs office. These declarations by passengers are usually handed to the Customs officer one or two days before the ship lands. The date on this declaration, November 2, indicates it was received that day. These declarations are available to Customs officers to compare with the package that comes through.

Mr. Crandell: Defendant Takahashi offers in evidence the exhibit marked A-2 for identification.

The paper was admitted in evidence. [91]

The paper admitted in evidence and marked Defendants' Exhibit A-2.

The three or four small pages attached to Exhibit A-2 constitute an ordinary list of articles declared. On the third page of these papers of articles declared on the third line is described "six pair of silk stockings".

Recross Examination

By Mr. Griffin:

When I was shown Exhibit #19 and #21 I said

(Testimony of A. S. Atherton.)

they were delivered to me voluntarily by Mr. Takahashi. It was on November 3 that he explained the situation of using the name of C. T. Takahashi & Company sometimes and other times China Import and Export Company. I investigated and found that the China Import and Export Company existed. I found that the name was duly and regularly registered with the County Clerk of the Superior Court of the State of Washington for the County of King on the 20th day of January, 1927. I didn't investigate whether Leo Nye Sing, whose signature appears on Exhibit #21, was registered with the United States Customs as an agent of the China Import and Export Company. It would not surprise me to know that he was. I knew as a Customs agent that over a long period of years, constantly in his line of business, Mr. Takahashi had been shipping to the Orient, both China and Japan, this same kind of material, and there was nothing illegal about any such arrangement until the embargo went into effect.

Redirect Examination

By Mr. Dennis:

This telegram, which is Exhibit A-5 does not refer to the three tanks, the three new tanks listed in Exhibit #19.

(Witness excused.)

Mr. Dennis: The Court took under advisement Plaintiff's [92] Exhibit #9 and Plaintiff's Exhibit

#36. I offered them and the Court reserved ruling.

The Court: I am assuming that the defendants—both defendants—are objecting to Exhibit #9?

Mr. Crandell: Just the basic objection.

The Court: And that the defendant Osawa objects to both exhibits?

Mr. Griffin: That is right.

The Court: The ruling is again reserved.

Mr. Dennis: At this time the plaintiff rests, your Honor.

Mr. Crandell: We would like to make some motions.

The Court: Do you want the jury excused?

Mr. Crandell: I think so, the Court may want some argument.

The Court: The jury will be excused subject to call.

(Thereupon the following proceedings were had in the absence of the jury):

Mr. Crandell: Shall we proceed?

The Court: Counsel, you may in the absence of the jury make your objection. Since this case has been tried before me before and I am familiar with the evidence, it is not necessary to make any arguments unless there is some argument that has not been presented to me before; but any argument that has been made I have heard and I am satisfied with what the ruling should be.

Mr. Crandell: Then I will just make the formal record.

The Court: All right.

Mr. Crandell: The Government having rested, the defendant Takahashi now challenges the sufficiency of the evidence and the sufficiency of the information to charge a crime of making a false statement, of conspiracy or of any other offense; that the evidence fails to prove an offense of conspiracy or of stat- [93] ing in the application the wrong destination; and we move the Court for a directed verdict on the part of the defendant Takahashi.

Mr. Griffin: The defendant, Edward Y. Osawa, at this time demurs to the evidence introduced and challenges the sufficiency thereof and moves for a dismissal and a directed verdict on the ground and for the reason that the indictment as made does not state a crime as against this defendant on any count, and the evidence as produced has established affirmatively the fact that the defendant Osawa was not a party to any such conspiracy charged in the count and was without the jurisdiction of the Court at the time this supposed conspiracy could exist, and it could only exist by reason of the passage of the act and an executive regulation under it.

And as to Count 2, which is another conspiracy count, that he was not a party to the application for the license; is not a member of the Charles T. Takahashi & Company or the China Import & Export Company, only an employee thereof. He did not make the application for the license in question as shown affirmatively by the evidence.

And as to Count 3, the evidence affirmatively

establishes that he was in no wise a party to any false and fraudulent statements and representatives made to any department of the United States Government on or about July 16, 1941, and it affirmatively establishes he was without the jurisdiction of not only this Court, but every United States court at the time.

Also, in addition thereto, and in preserving the constitutional rights of this defendant as to search and seizure, there have been introduced in evidence certain documents taken from the person of Mr. Takahashi; on which it has endeavored to connect a conspiracy count with the defendant Osawa, and that [94] the original motion to quash and sequester should have been allowed, and exception was preserved at that time as to the introduction of those exhibits over objection, as to my client, was duly noted.

Your Honor has heard argument heretofore on this matter and I do not imagine I could add to what has already been said.

Mr. Crandell: My attention has just been called to the fact that I have not designated any Count in the indictment, following—

The Court: It will be understood your motion, challenge and demurrer runs to the indictment as a whole, and as to any part thereof, separately.

After some argument,

The Court: The motions which have been designated as the basic motions are again denied.

The motions, and challenges, and demurrers of each defendant as to the indictment and the evi-

dence as to each count of the indictment are overruled and denied and exception is in each instance allowed.

(Recess ended).

The Court: You may proceed.

(Therefore the following testimony was introduced on behalf of the defendants):

OSCAR W. DAM

Called as a witness on behalf of the defendants, after having been duly sworn, testified as follows:

Direct Examination

By Mr. Crandell:

My name is Oscar W. Dam. I am Deputy Collector in charge of the Foreign Division of the United States Customs. In such office we have powers of attorney on file, which authorize exporters to sign certain import papers, ships export declarations and neutrality oaths. I am familiar with the China Import and Export Company. The power of attorney in the files was dated May 7, 1941, executed by C. T. Takahashi, proprietor of the China Import and Export Company. The agent named is Leo Nye Sing. That power of attorney has been filed since May 7, 1941. I have refreshed my recollection by the record of Japanese mail and passenger ships incoming from Tokyo from the month of July, 1941 to November, 1941. The Heiu Maru arrived at this port July 7. The next ship

(Testimony of Oscar W. Dam.)

was Heian Maru, which arrived July 31, and the third was the Hikawa Maru, arrived on November 2. That is all of the regular passenger or mail ships. The length of time between Japan and Seattle is thirteen or fourteen days.

Cross Examination

By Mr. Dennis:

During the period mentioned the Canadian Pacific, Empress boats, also carried mail and there was some clipper mail from the Orient by way of San Francisco. There was airmail service between Japan and San Francisco.

Witness excused.

C. T. TAKAHASHI

One of the defendants, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Crandell:

My name is C. T. Takahashi. I am a citizen of the United States of America, thirty-nine years old. I was born in Seattle, Washington, of Japanese ancestry. My father arrived in Tacoma about 1889 and arrived in Seattle around 1892. He attended the Pudget Sound University at Tacoma. In Seattle his [96] business was importing and exporting. He died in 1920 and after his death I continued the business. I went to the public schools in Seattle,

(Testimony of C. T. Takahashi.)

then was two years in Staunton, Virginia, in the Staunton Military Academy, then returned to Seattle and attended the University of Washington for three years. At Staunton I had some military training and later was in the Boy Scout movement in Seattle, where I was teaching boys good citizenship and the meaning of scouting, namely, to be mentally alert, physically strong and morally straight. It was during my scout work that I met Mr. Osawa, and through that acquaintance he became associated with me later in business. This association started about 1929. By 1941, when this charge was laid, he was my General Manager. My business has been general importing and exporting from the North American continent to the Orient, and from China and Japan I was importing to the Northwest here. The products generally being imported in the main were fertilizers. By that I mean meal, linseed meal, linseed cake and meals for fertilizers. Those were our largest items. We exported a little lumber and products of the Northwest, steel, etc., practically anything that we had a market for. It included worn rubber tires and metal junk. During the latter part of 1940 and up to July 16, 1941, there were many large firms doing the same business and were our immediate competitors. Between the last dates it was legal all the time so to do. My mother is in Japan at present and unable to get out. I have had the assistance, in an effort to get her out, of Mr. Zumwalt, an Immigration officer.

(Testimony of C. T. Takahashi.)

who is to be a witness here for the defense. My business is conducted under the name of C. T. Takahashi & Company, and also the China Import & Export Company. I am the sole owner and am not incorporated. The China Import & Export Company has been used as a trade name [97] since about 1927. I had it registered about then.

The Declaration of Proprietorship marked Defendant's Exhibit A-9 for identification was handed to the witness. That is a copy of my declaration of proprietorship of the China Import & Export Company, filed and prepared by me. Exhibit A-9 for identification was admitted in evidence.

The Declaration of Proprietorship marked Defendant's Exhibit A-9 for identification.

(Exhibit A-9 read to the jury by Mr. Crandell).

It is difficult to say what percentage of my business was conducted under the name China Import & Export Company. At certain periods it was greater than half, but by 1941 it wasn't even half.

Referring to Exhibit A-4 for identification, which is the contract with the Mexican concern, I entered into that contract under the name China Import & Export Company. It was not done with the purpose of deceiving or misleading anyone. I have used the name C. T. Takahashi & Company since 1924.

Referring to Exhibit #19, that was signed by Iver Ewers, an attorney in Washington, D. C., who represented us. He was engaged by Mr. Osawa or

(Testimony of C. T. Takahashi.)

Mr. Shenker, who were authorized by me to do so. When it was drawn in Washington the present pencil marks were not on the application. I don't know how many copies were made of the application, but Exhibit #19 was an original copy that was returned to us.

Exhibit #21 is an application I made for shipment to China.

(Whereupon the jury was duly cautioned and excused until 10:00 a.m. October 3, 1941).

October 3, 1941, Court convened pursuant to adjournment. [98]

Mr. Dennis: May it please the Court, I will state I have Leo Nye Sing in court this morning, in accordance with the request of the Court.

Mr. Crandell: Thank you. I wonder if we can withdraw Mr. Takahashi and put Leo Nye Sing on, and I would like also to put on Mr. Ira Bedle of the National Bank of Commerce.

IRA W. BEDLE

A witness called on behalf of the defendants, after having been duly sworn, testified as follows:

Direct Examination

By Mr. Crandell:

My name is Ira W. Bedle. I live in Seattle and have so lived for twenty-four years. For twelve years before that I lived in Spokane. I am Vice President of the National Bank of Commerce in

(Testimony of Ira W. Bedle.)

this City. I am acquainted with the defendant, Mr. Takahashi. I have known him in a business way about fifteen years. I know his reputation among his business associates for being an honest law-abiding citizen. That reputation is good. I am also acquainted with Mr. Edward Osawa. I have known him seven or eight years and know generally his business associates. I know his reputation in the community for honesty and being a law-abiding citizen. That reputation is good.

Cross Examination

By Mr. Dennis:

I don't know Mr. Kohno or Mr. Ikuta or any of their associates in Japan.

(Witness excused.)

LEO NYE SING

Recalled, having been previously sworn, testified as follows:

Further Cross Examination

Q. (By Mr. Crandell): Did you go to any office, either federal [99] *federal* office or state office or any other office and register as an agent for China Import & Export Company at any time?

A. No, sir.

(Witness excused.)

C. T. TAKAHASHI

Resumed the stand for further

Direct Examination

By Mr. Crandell:

Our main office was Seattle, Washington. We had a branch office in Tokyo, Japan. We had in charge of that office a man named Togo. We had a branch office, a representative in Vancouver, B. C. The Manager was Meyer Franks. We had a branch office in Portland, Oregon, in charge of Mr. William Shenker. I had another branch in Oakland, California, represented by Mr. Sali Gruenbaum. In the Seattle office, in my importing and exporting department, I had six employees. They were all American born of Japanese ancestry.

Q. Referring again to Exhibits # 19 and #21, what use did you make of #19 in preparation of #21?

A. I used #19 as a model in making out my application #21. The model was made and signed by my lawyer in his Washington office. Exhibit #21 was made in my office. On Exhibit #19 the pencil marks were made by my secretary, Mrs. Kawaguchi. Upon Exhibit #19 on the line where appeared C. T. Takahashi & Company there is a pencil memorandum China Import & Export Company. She also wrote that. All such pencil notations were made at my direction. The pencil memoranda were not made for the purpose of deceiving anyone, nor with the idea that the destination named in #21 should be China when in fact I meant Japan. My instructions to all members of

(Testimony of C. T. Takahashi.)

my office with reference to United States government regulations were at all times to follow all such regulations to the exact letter. [100]

With reference to Exhibit #85, a telegram from the Mexican company, I remember receiving it and I immediately answered it.

Exhibit #86 is the answer. That answer was sent cancelling my contract with the Mexican concern, was sent pursuant to my policy of complying with the Federal Government's regulations.

Mr. Crandall: If the Court please, at this time I want—if Exhibit #9 to which the Court has reserved a ruling, is to be accepted as an exhibit, it is logical now for me to follow in my examination a subject that will involve that. And if it is not going to be introduced then I will not have to touch upon that.

The Court: As I understand it, Mr. Crandell, both you and Mr. Griffin, for your respective clients, objected to Exhibit #9 for identification.

Mr. Crandell: My objection is the basic objection.

The Court: I say you objected.

Mr. Dennis: I withdraw the offer, may it please the Court, as to Exhibit 9.

The Court: All right. That takes care of that.

The offer of Plaintiff's Exhibit #9 withdrawn

Mr. Crandell: Handing you Government exhibits marked #17 and #18, did you at the time the application known as Exhibit #21 was prepared, know

(Testimony of C. T. Takahashi.)

of the existence of the two letters marked Exhibits #17 and #18?

A. I did not.

Q. I notice that Exhibit #18 and #17 are both dated Japan, July 16. About what date did you receive these letters?

A. Sometime, I believe, in August.

Q. I notice that your application for the sale of these three tanks is also dated July 16, 1941. What was the date the [101] application was made and transmitted to the State Department?

A. July 16.

Q. So that your application here in Seattle was prepared and transmitted to the government of the United States on the same day that the letters, 17 and 18, appear to be dated?

A. Yes. I had no knowledge whatsoever of Exhibits #17 and #18 when I made that application, and the letters, 17 and 18, did not influence or control me or persuade me in any way in making that application.

With reference to the three tanks, they were three complete new tanks. Prior to this time I had bought and sold tanks to Japan. We had sold around thirty-two old tanks, dismantled tanks; From the beginning of the year 1940 to about the beginning of the fall of 1940.

Mr. Crandell: If the Court please, I now have an exhibit, being a letter with a document attached, which I desire to be marked as one exhibit. Letter and document attached marked A-10 for identification.

(Testimony of C. T. Takahashi.)

Mr. Crandell: Describe briefly what they are without telling the contents.

Objected to by Mr. Dennis and objection sustained.

After further argument,

The Court: Counsel, there will be recess and I will listen to you again. If you convince me that I am mistaken I will reverse my ruling. If you don't the ruling will stand.

Recess.

I had Exhibits #17 and #18, together with some other documents that were associated with them, in my possession on November 2, when I went to the Great Northern dock. I went to the dock at Mr. Osawa's request. I received a telegram from him from Victoria, Canada, which was sent when the boat arrived [102] there the day before, asking me to bring \$200.00 to the dock to give to him to pay for the duty that would be charged upon presents and things that he had. I had \$200.00 with me.

I was the one who directed Mr. Osawa to go to Japan. The main purpose was to close our Tokyo office and settle an account of a very little business deal that we had pending. I instructed him about March, 1941, to go. At that time I did not advise, suggest or authorize him to go over there and make arrangements to make shipments to China so that they could be transferred to Japan. The closing of our Tokyo office meant that we were finished there, going to abandon further operations there.

(Testimony of C. T. Takahashi.)

Mr. Crandell: Going back to Mr. Osawa's return to Seattle, for what purpose did you take the letters, #17 and #18, to the boat?

A. I wanted to discuss them with Mr. Osawa at the very earliest possible moment. The interpretation that I made of it here was absolutely contrary to the policy of my firm. I had not answered the letters up to that time and never have answered them and they never since had any correspondence with the Tokyo company. I never at any time by word of mouth or written statement suggested the shipping of any goods at any time to China or anywhere else where they could be re-shipped to Japan and would not enter into such an arrangement. After that application for license was tendered I made further effort to dispose of the tanks. In the spring of 1941 we tried through the Mexican concern to sell the three new tanks to the Mexican government, through their oil department, and we also tried through New York to sell the three new tanks to the British Buying Commission and through my—and I sent Mr. Shenker to the British Commission, located in New York, and paid his expenses and instructed him to find a buyer. About the Mexican [103] people, I asked Mr. Shenker to approach certain friends I had in Mexico, besides any that he himself could find. I paid his expenses on a trip to Mexico and gave him his instructions. At all times we were trying to sell the tanks in this country. There was a time when I had my man, Mr. Strangeways, approach the Army depots at San

(Testimony of C. T. Takahashi.)

Francisco. All my branch offices were working on the matter. I was not trying to get them into China so that they could be shipped to Japan. I also made attempts to dispose of the tanks in Canada, through my branch office in Vancouver. We received an offer for the purchase of these tanks by cablegram from Shanghai. The original cablegram we attached to the application we made to Washington, D. C., so that the Government now has the original cablegram. That was not a fictitious order. I sent that order to the Department of Licenses in the State Department. I have never seen it since. The tanks are now in the United States; two of them are located on National Defense work and one was purchased in Portland by the Portland Gas. Since the transaction different departments of the Government have asked if we still had the tanks and wanted to buy them. I authorized you (Mr. Crandell) to give that information. I have done everything I could to assist the Federal Government in order to see if they could purchase them if they were available. I have never done anything in the conduct of my business that would thwart in any way the interests of the country.

Mr. Crandell: You may cross examine. Mr. Tillisch is here. Have you any objection if I put him on? He will be a short witness. He is one of the men on the Great Northern. He will be a very brief witness.

The Court: He may take the stand.

PAUL WILLIAM TILLISCH

Called on behalf of the defendant, [104] after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Crandell:

My name is Paul William Tillisch. I live at 1130—19th Avenue North, Seattle, where I have lived for eleven years. I have been in Seattle for twenty years. I am Chief Clerk to the General Manager of the Great Northern Railway. Have been such for thirty-four years and still actively engaged in railroading. I am acquainted with Mr. Takahashi, the defendant. I have known him since the Fall of 1918 in a business way. I know generally his associates and acquaintances in the City of Seattle. I know his reputation among those people for honesty and for being a law-abiding citizen. That reputation is good.

Cross Examination

By Mr. Dennis:

I know nothing about his associates in Japan.

Witness excused.

Recess

C. T. TAKAHASHI

on stand.

Cross Examination

By Mr. Griffin:

Mr. Takahashi: In the letter, Exhibit #14,

(Testimony of C. T. Takahashi.)

dated July 5, "The trouble with mercury and tinfoil is that the Gunbu has no direct interest in it and the association is handling all imports of those articles", the word "association" means something similar to our Priority Board in this country. Japan was using priorities before we were here, in effect having an embargo on certain exports to this country; that was affecting import business to this country very much. Then the priorities or embargoes, whatever we call it, went into effect here on [105] certain items of export and that was cutting our export business. Prior to the invasion of China by Japan in 1937 we had important Chinese business, but after 1937 it all disappeared; in fact a lot of Chinese firms themselves disappeared. Prior to the regulations of embargo in the United States going into effect there was considerable activity on the part of certain associations against the shipment of anything to Japan. When it was first talked in the United States of an embargo we were supplying or preparing to supply certain used storage tanks to customers in Japan. We supplied nothing to the Japanese government as such. When we first started shipping used storage tanks we were in doubt whether or not a license was required and took the matter up with the Collector of Customs in Seattle. He was Saul Haas. We were unable to get definite information from him as he wasn't sure himself. The matter was taken up with his superiors in Washington, D. C., that is, with the State Department, and eventually we were ad-

(Testimony of C. T. Takahashi.)

vised by the Collector of Customs in Seattle that no license was required in our exportation of these used tanks to Japan. A letter to that effect was given us from the Collector of Customs. Prior to the receipt of that letter we made a formal application. Exhibit A-10 for identification shows our signatures to a formal application for a license. It bears the stamp of the Department of State of the United States. That letter is dated December 21, 1940.

Mr. Dennis: I object, and would like to ask the witness a question. Did any of this correspondence have to do with new tanks?

A. No, sir.

Mr. Dennis: I object on the ground that it has no bearing on the issues in this case, which all concern new tanks. We [106] are concerned entirely with three new tanks.

The Court: Let me see the letter. I have indicated by my previous ruling that I did not consider this material. No objection has been made to the preceding cross examination by Mr. Griffin. I will let the letter go in with the preceding evidence. The objection is overruled.

The letter is admitted in evidence and marked Defendants' Exhibit A-10.

(Mr. Griffin read Exhibit A-10 to the jury.)

Mr. Griffin: The dismantled tanks for re-erec-

(Testimony of C. T. Takahashi.)

tion purposes were shipped pursuant to that authority?

A. Yes. I complied with the Federal regulation in every particular. There was no difference between old tanks and new, except the fact that one had been used and the other had not. The tanks, old and new, were storage tanks for oil. Having made the application, Exhibit A-8, for old tanks, then I make application to the United States government for license for new steel dismantled storage tanks. That application was signed for C. T. Takahashi & Company by Mr. Osawa. I sent Mr. Osawa to Washington, D. C. to make the application. He was there so that he could find out and conform to everything that the United States government required. Mr. Osawa was in Washington at least a week. It became necessary for him to employ counsel.

Referring to Exhibit #29 and to part 2 of that exhibit, the name there is Ira Ewers. He was the attorney employed in Washington. This document came back to our office at one time. There was a renewal for the same tanks that Mr. Osawa had made the application for on February 8, 1941. The same attorney who made the original application made the second one. That application was rejected. There was an appeal made and [107] eventually the appeal was denied. The words used were "appeal disapproved".

Mr. Griffin: Mr. Dennis and I cannot agree as to the date written after the words "application re-

(Testimony of C. T. Takahashi.)

jected", but it would be April or May apparently and that is the best we can say.

Mr. Dennis: I think so.

(Noon adjournment.)

By Mr. Griffin:

Referring to Exhibit #29, part 2, being the application made by Mr. Ewers on April 16, 1941, with reference to a license for these three tanks, Mr. Osawa was in Washington. He was there in February, but not in April. In April he was in the Orient. He returned from Washington, D. C. the early part of March. He made a report upon conditions existing in Washington with reference to shipments of material^y generally to Japan. And I sent him to Japan. The main purpose in sending him was to close the office there; another reason was we had an account to be taken care of in connection with that matter.

Referring to Exhibits #17 and #18, those are letters from Mikuni-Shoko Company that I received some time in August, 1941. The letter of July 16, 1941, Exhibit #17, which I received in August, states with reference to advancing money "Put up by us to you already"; I didn't have any advance money from Mikuni.

Shenker remained for a time in Washington, D. C. after Mr. Osawa returned. When Mr. Osawa went to Japan for me neither then nor at any other time did I give him any orders or directions to arrange to violate directly or indirectly any law or regula-

(Testimony of C. T. Takahashi.)

tion of the United States of America. Our branch office in Tokyo had no connection with Mikuni-Shoko Company Limited. They were a customer of ours. I am quite sure that they did not have any connection with the Japanese government, [108] officially speaking. They were a recognized, standard financial concern in Tokyo and one upon which I would rely upon their recommendation of the financial responsibility of another concern.

When I sent Osawa to the Orient it was contemplated that he should go to Shanghai. It was also necessary for him to go to North China, called Manchuria, where we had an account in difficulty. I wanted him to go to Shanghai to open a chain of connections for business with China. I was particularly interested in wood oil for import to the United States. Wood oil is one of the most vital materials in making paint which is used in war industries and in aviation. He was unable to go to Shanghai.

Cross Examination

By Mr. Dennis:

Referring to defendants' Exhibit A-5, which is a telegram, the tanks referred to therein were not the three tanks in question. These three tanks referred to in this telegram were different tanks than the three referred to in application, which is plaintiff's Exhibits #19 and #21.

And referring to defendants' Exhibit A-6, that telegram does not refer to the three new tanks.

(Testimony of C. T. Takahashi.)

Referring to defendants' Exhibit A-7, that letter has no reference to the three new tanks and the purpose of the affidavit attached to defendants' Exhibit A-7 was for the purpose of obtaining a permit.

Mr. Kono was here in Seattle for a while with me for about four months. I believe it was during the end of 1940 and the beginning of 1941. He was doing business with us, representing his own firm and not representing my firm. His headquarters were at the Holland Hotel. He was at our office almost every [109] day. He represented the Mikuni-Shoko Company Limited of Tokyo, Japan. Mr. Ikuta is a director of Mikuni-Shoko Company.

At one time my business with Japan and China was practically 50-50. And in 1940 and 1941 it was less than half in China to that in Japan. During the year 1940 I did not telephone to China because there was no telephone service there. In 1940 I made no shipments of steel tanks to China, nor in 1941. In 1941 I received a letter from a firm in Tientsin in North China. That is not the sum total of the letters received. I think there was quite a bit of correspondence, because we were trying to obtain walnut meats, and also furs from North China. We sent some goods to China during the years 1940 and 1941. We sent many automobile bearings; also rubber tires and newspapers and machineries. The orders came from Koman Company and also from another firm by the name of Manchuria Heavy Industries. The Koman Company is not a Japanese concern; it is Korean. I sent no goods to Shanghai

(Testimony of C. T. Takahashi.)

during the year 1940 or 1941. Prior to April of 1941 I never received any communication of any kind from Hua Hsin Company. I have not received any letter from them direct up to the present time. I understand Mr. Kiang is the Manager of Hua Hsin Company. I think his initial is M. Kono's name is also Chang. I never received a letter from him. The only communication that I ever received from the Hua Hsin Company was the cablegram, which is in Washington, D. C. The name signed to that cablegram was Hua Hsin Company; no individual name added. This proposition of three new 80,000-barrel storage tanks involved approximately \$88,000.00. Those tanks were already manufactured, finished about March, 1941. The cost of those tanks made at Chicago was about \$60,000.00 in Chicago. The \$60,000.00 had been paid in December, 1940, as a part advance payment and that money was returned to them; I [110] do not recall the exact amount that was paid to us, but I think somewhere around \$55,000.00 advance money was given to us in December, 1940.

Q. And then how much afterwards? And the balance was made up by a credit arrangement for payment of freight, and that amounted up to about \$71,000.00, as far as the credit arrangement goes, so you have been paid in full for the manufacture of the tanks, and then you had some advance money for freight. That is correct, isn't it?

A. No. That was another transaction altogether

(Testimony of C. T. Takahashi.)

the freight transaction, and that is how they got additional credit up to \$71,000.00.

It is difficult for me to say how much business I did with Japan during the year 1940 and the year 1941, because it was quite a large business and it all reflects on our books and I myself could not hardly tell you. I do not know whether we shipped to Japan over four million sacks, but we sold quite a lot of sacks. I do not know the exact figures. These were sold through Messrs. Mitsui & Company Seattle, Washington. We also sold thirty-two steel tanks through Mikuni-Shoko Company. We had correspondence back and forth with the Mikuni-Shoko Company and some long distance conversations with them. In 1941 we also had correspondence with the Mikuni-Shoko Company and long distance telephone conversations with them. And when Mr. Osawa was in Tokyo I had long distance conversations with him which continued until he departed on the last steamer over here. I telephone to Mr. Osawa in regard to the three steel tanks. I never sold any tanks to the Japanese government direct, but I sold thirty-two used tanks to the Japanese government through Mikuni-Shoko Company.

Recross Examination [111]

By Mr. Griffin:

In my conversation with Mr. Osawa I told him that the Government had rejected the application prepared and filed by Mr. Ewers at Washington, D. C. and that an appeal was taken on that matter

(Testimony of C. T. Takahashi.)

and that the appeal had been denied and that no shipment could be made to Japan.

When Mr. Kono was in my office in Seattle in the winter of 1940 and 1941 he was endeavoring to establish a connection with me as the exclusive agency in Japan. I had no connection with him personally different than any other customer. He was the one referred to in one of Mr. Osawa's letters as "Snickelfritz". I think that was kind of a joke played on him by the office force in our office because he was running around so much. It was only a nick-name.

Re-Recross Examination

By Mr. Dennis:

It is hard for me to be definite as to what month Mr. Shenker was in Washington, D. C. He was in Mexico in 1941 and was five or six weeks there.

Re-Re-Recross Examination

Q. (By Mr. Griffin): Now, I was a little confused from Mr. Dennis' cross examination in regard to the money or the \$71,000 or whatever it was. At the time that you received the order from the Hua Hsin Company from Shanghai, China, had you made any payment at that time for these tanks or any portion thereof?

A. Absolutely not.

Q. Now, as I say—you answered Mr. Dennis that at one time and I think the dates are important,—at one time you had an advance payment from Mikuni in the sum of \$60,000 for the manu-

(Testimony of C. T. Takahashi.)

facture and an additional payment for freight that [112] ran up to about \$71,000. Prior to the receipt of the Hua Hsin order in July had that money, advance payment, been refunded by you to Mikuni and by the transfer of yen by Mr. Osawa in Japan?

A. Yes, that had been paid back to Mikuni by transfer of yen.

Q. So that when you received the Hua Hsin order you were actually out of pocket the cost of these tanks, of manufacture, transportation and storage up to that time?

A. Yes, we were.

Q. And you were trying to dispose of them wherever you could, as you stated before?

A. Yes, sir.

Q. On a direct sale to the country involved?

A. That is correct.

Q. Was it your custom in your business to deal with letters of credit?

A. That is the absolute custom of all importing-exporting companies, and not to—well, except from 1923 to May, 1939, the beginning of World War #2, where all firms became very, very particular on that point, in fact getting money in advance, because throughout the world it was a chaotic condition and it was very important, and at that time a letter of credit was in effect a guarantee by a reputable bank.

Q. That the customers were paid that amount of money or should be paid by the bank? Yes, it was a irrevocable payment by the bank.

(Testimony of C. T. Takahashi.)

Exhibit A-3 is a copy of a form of letter of credit. That was the one from Mexico. I am located now at the Minnedoka Relocation Project, five miles from Eden at the fringe of the sagebrush desert in Idaho. I am connected with the Boy Scout movement in the camp and Mr. Osawa is assisting me in that work. [113]

Re-Re-Re-Recross Examination

By Mr. Dennis:

Mr. Osawa took care of arrangements of paying back the money to Mikuni-Shoko Company. I think it was the early part of March that I notified him to do so. I had yen in Japan. I instructed him to do so just before he left here for Japan, which was the early part of March. The application to ship these three tanks to the Mikuni-Shoko Company was dated April 16, 1941. At that time I do not think I had returned the money to Mikuni-Shoko Company. Right now I am not exactly sure whether the money was returned before or after the application was denied. I discussed it with him when he left, because that was part of the business of cleaning up our account in Japan. When I filed the application and when he went I did not expect to send these goods to Tokyo.

Q. Yes, and in spite of the fact that you did not expect to send these three tanks to Japan, you instructed Osawa to return the \$71,700.00 to the Mikuni-Shoko Company? Is that what you want this jury to understand?

(Testimony of C. T. Takahashi.)

A. What I want the jury to understand is that I had a lot of yen in Japan which I wanted to exchange into American funds. And whatever funds that they had there, I wanted to exchange into their credit account that we had here, because I did not want to have yen in Japan. My interests and home and everything is centered around here, and naturally I wanted to protect myself first.

Q. What I am interested in, Mr. Takahashi, is when it was that you definitely returned that money to the Mikuni-Shoko Company?

A. That I cannot recall, the exact date.

Q. You cannot tell us whether you did that by telephone? [114] I will ask you if you did telephone to Osawa to return that money to the Mikuni-Shoko Company?

A. I think I did by cable also. You see we had some 900,000 yen. And it was all in those moneys that we had over there; so I cannot tell you right now the exact time when a certain amount was taken care of at certain times.

Q. Now then, at the time you made the application to Washington, D. C., for these tanks to be shipped by the China Import and Export Company, did you have any order for any money or any letter of credit from Hua Hsin Company?

A. No, sir, I did not. I did not need it.

Q. You were relying entirely, as a matter of fact, on the Mikuni-Shoko Company, weren't you?

A. Well, we don't worry in our import-export business, Mr. Dennis, because if a person does not

(Testimony of C. T. Takahashi.)

send a letter of credit, even at the last minute, you don't have to load the goods, and as long as we have the goods we are not worried at all about finances.

Q. So you had no letter of credit at all from Hua Hsin Company?

A. That is correct.

Q. You were not relying on the Mikuni-Shoko Company?

A. If arrangements had been agreed upon, I would have waited for a letter of credit to come from China. If there hadn't been any letter of credit I wouldn't ship even if the license had been granted. I was not relying in any way on Mikuni-Shoko Company for the funds for the proposition from China. I would rely on them in this sense that they would have to recommend to us some firm of reliable financial standing.

Re-Re-Re-Re-Recross Examination

By Mr. Griffin: [115]

When Mr. Osawa returned from Washington I definitely had the opinion that the application would be rejected and as a result of that when I sent him to the Orient I advised him to settle the matter with Mikuni and get the yen out of Japan. It was in the Spring of 1941 that I first knew that the money had been paid to Mikuni-Shoko Company.

(Witness excused.)

EDWARD Y. OSAWA

one of the defendants, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Griffin:

My name is Edward Y. Osawa. I was born in Seattle, Washington. I am forty years old, an American citizen of Japanese ancestry. I went through high school in Seattle. I have been married about twelve years and my wife is an American citizen. My home since the date of my birth has been in Seattle. Now I am at Eden, Idaho. I have known Mr. Takahashi since childhood, and had my first business connection with him in 1929. He was then at 212 Fifth Avenue South, Seattle, where he is now. The name of the company was C. T. Takahashi & Company, also China Import & Export Company. The last named was being used at the time I first entered relations with him. The nature of the business was import and export, whether operating as the C. T. Takahashi Company or the China Import & Export Company. I was general assistant to Mr. Takahashi and worked up to general manager in 1940 and 1941. As general manager I was familiar with the details of the business. The bookkeeping was done by an auditor. In those years we had branches in Portland, Vancouver, Oakland and Tokyo, Japan, and different managers at each place. The Tokyo office had no physical conn- [116] ection with Mikuni-Shoko Company and was a customer. We once had a consider-

(Testimony of Edward Y. Osawa.)

able export and import business with China, but it fell off prior to 1940 and 1941. The principal break came in 1937, when Japan invaded China. At one time we had an important account in North China, commonly called Manchuria. The account was with the Kono Company. We had exported a considerable amount of merchandise to this company, consisting mostly of automobile bearings and tires. We also shipped some mining machinery to another company named Manshu Jyukogyo Company, known over here as Manchuria Heavy Industry. We were having difficulty with that account. I recall the time when there was required by the United States government a consent by way of license for the shipment of material of the kind we were shipping to the Orient. The first reaction, I believe, came in August, 1940, and had to do with scrap steel, to ship which a license was required by some department of the United States government. There was some controversy whether tanks would come under the scrap steel requirements. At that time we were shipping used tanks to the Orient for the storage of oil, and there arose the question whether they came under the heading of scrap steel.

Referring to Exhibit A-10, the second sheet, it has a copy of my signature. At about November, 1940, I made application on behalf of C. T. Takahashi & Company, to the United States of America for license to export eighteen complete used steel dismantled storage tanks and accessories for re-erection purposes. I thought I was complying with

(Testimony of Edward Y. Osawa.)

regulations of the United States government and the necessity, or lack of necessity, for license, referring to Exhibit A-10, and that is where I got the direction that no license was required. Following that we got an order [117] for new tanks. That would come under the heading of new steel. Whether new or scrap they are used for the same purpose. I went to Washington in connection with the three new tanks in question. In the application as ordered from Mikuni-Shoko Company in Tokyo. Originally the order was for eleven new tanks. We couldn't get eleven, only three. We did not manufacture the tanks ourselves, but had to arrange for the manufacture of them. We placed the order with the Galamba Supply Company of Kansas City, Kansas, who in turn placed the order with the Graver Tank Company of East Chicago, Indiana. By February 1, 1941, the three tanks were in process of manufacture. Then I went to Washington. That was about the time the application is dated. At that time I think the regulation, or Presidential proclamation, was made giving us ten days to ship all outstanding orders; from ten days off a license would be required. After reaching Washington I made an application. I got the printed form. The printed form was supplied through our attorney. Such applications are made in duplicate, or triplicate, I don't remember for sure. On Exhibit #29, part 3, is my signature. That is the application made by me on behalf of Takahashi & Company for a permit to ship to Mikuni-Shoko

(Testimony of Edward Y. Osawa.)

Company at Tokyo, Japan, these new steel dismantled storage tanks and accessories for re-erection purposes. That was the first application. It was filed through our attorney, Ira W. Ewers, an attorney in Washington, D. C. The Government did not grant the permit. I left Washington and returned to Seattle. At the time I left Washington I did not know definitely that the permit would not be granted. When I left Washington I believed that no license would be granted for the shipment of either scrap or new steel to Japan. I was in Washington about two weeks. In making the application I was endeavoring to comply with every [118] regulation of the United States government. In the early part of March I sailed for Japan. The main purpose was to close the office and to complete the transaction there of money to be paid us on the mining machinery deal that we made in Manchuria. At the time I left Takahashi had received an advance payment on these tanks from Mikuni-Shoko Company. At that time we had considerable yen in Japan. That is a customary condition of exporters and importers to keep money in their various countries where their offices are. I was advised that the application was rejected and that an appeal had been made. Some time away later we heard definitely the appeal was rejected. I settled the account with Mikuni-Shoko Company by an exchange of yen and refunded them by an exchange of credit. When I left for Japan I contemplated going to Shanghai and to Manchuria. I made my headquarters in

(Testimony of Edward Y. Osawa.)

Tokyo at the Imperial Hotel. While there I closed the Tokyo office. Mikuni-Shoko Company have no connection with Takahashi or the China Import and Export Company, except as a customer. When I left the United States Mr. Takahashi instructed me to comply with every rule, law and regulation of the United States.

Referring to Exhibit #29, part 3, there was a question raised about the form and a new one was made. I was out of town when they made the new one. When I was in Washington Mr. Shenker, manager of the Portland office, was with me. After making the application we split up in Washington and I went to New York. He came back to Portland. On my trip to the Orient I went to Manchuria in connection with the settlement of the controversy between our concern and the North China concern over the shipment of machinery. It was completed before I left Japan; so was the office closed. I did not go to Shanghai, being unable to do so due to restrictions in force. We were looked upon [119] as foreigners so far as Japan is concerned, that is, I am an American and restricted as a foreigner from going to Shanghai from Japan. When I left Seattle our company was interested in obtaining a representative in China. We were interested in importing wood oil. I wrote Exhibits #14, #15 and #16 to Mr. Takahashi. When in Japan I contemplated leaving for the United States about the middle of July of 1941. I didn't get the boat. I was trying to conclude my business, and it

(Testimony of Edward Y. Osawa.)

was not until two days after the sailing of the boat that I finally completed everything. I took the next boat out, which left in the latter part of October. That is the boat that arrived in Seattle on November 2. Between those two boats there were no mail-carrying boats to Seattle from Japan.

In Exhibit #14, being a letter written by me on July 5, 1941, "Was quite interested in the activity in Mexico", I refer to Mr. Takahashi sending Mr. Shenker down to Mexico in order to obtain a lot of second-hand machinery. Where I say: "The trouble with rails, mercury and tin plate is that the gunbu has no direct interest in it and the association is handling all imports of these articles" the term "gunbu" means "military party" and "association" is a group of buyers forming sort of a cartel, and they in turn, say it was scrap steel, certain firms would handle all the importing of all of that particular commodity into Japan. When in Japan I found that the governmental authorities were limiting their operations practically to large importers. They depended mostly on firms like Mitsui and Mitsubishi, and I tried to see if there was any importing business available in competition with these firms, and I found I was being sent from one government agency to another but never got anywhere, and I said "they gave us a low price to get rid of us." In saying: "Even if you had any business, [120] the matter of space", and so forth, "space" means steamer space. I found that I was able to do

(Testimony of Edward Y. Osawa.)

business in exporting with reference to rails, mercury and tin plate. The subdivision of that letter referring to "Marmon" means Marmon trucks of American manufacture we were trying to sell.

I was unable to go to Shanghai myself and I went to Mikuni's office and saw Mr. Ikuta and asked him to do me a personal favor to line up some good Chinese firm for me. It is possible that the Chinese firms in Shanghai at that time were operating only subject to the right to operate of the Japanese military that controlled the ports. When I say "control" they dictated exactly what these firms were to do. They knew their financial standing and they would then compare to find what firm was financially responsible.

Q. You say in that same letter: "In order to make it easier for you in making application, you can now say your representative is Willie Chang." Had Chang been in Seattle?

A. Yes, sir. He had no connection with Takahashi Company, but was a customer. He was given the name "Snickelfritz" by the boys in the office as a nick-name.

Q. You say: "Mr. Ikuta went to Shanghai and checked and found out that the wood oil at present is handled by Showa Tsusho, Mitsubishi, and so forth, so he negotiated to get this through the back door. The arrangement is a difficult one to explain here, but will do my best. Wood oil that came and is coming into Shanghai is held by gunbu. They have control of all the stock. The material may

(Testimony of Edward Y. Osawa.)

cost only 10 cents in the front, but when it comes to Changhai it's worth a dollar". What did you mean by "back door" and "from 10 cents to one dollar"?

A. By "back door" I meant that Mr. Ikuta would use his personal influence with the gunbu so it would be possible to get [121] the supplies. I was trying to get into that importing business of wood oil. By "10 cents and a dollar" I meant wood oil comes from the far interior of China in small quantities, and the closer they come to the port the prices go up because of the greater risk. I do not know if the Military took it for their own purposes when it reached Shanghai, but it was in there to be handled as far as exporting was concerned. I was not able to get that business of importing wood oil. I was informed that the Chunking Government had a large stock of wood oil in the United States which they were selling over here. The quantity was unknown. However, I surmised that no further stock was coming out of China unless it was coming through the Burma Road. Therefore, I figured it would be a lot easier to obtain it in Shanghai and bring it here.

"Manygo" refers to that company in Manchuria with whom we were having difficulty.

Q. Referring to Exhibit #15, letter July 12, you say: "It has been a long time since Kohno and finally Ikuta went to Shanghai and was finally able to make arrangements. In order to work progress

(Testimony of Edward Y. Osawa.)

better it is better that we have our own name registered there under CIECO". That means what?

A. China Import and Export Company, and is the initial of our Seattle registered name.

Q. You say: "Kohno, known as Willie Chang, will represent us there. That is the only way that we will be able to work a lot of things over there that other firms can't. For instance, wood oil is under control of the gunbu and in connection with a sort of Okurasho" What does that mean?

A. Treasury Department.

Q. What were you referring to: "Vladivostok and Netherland East Indies is absolutely out"?

[122]

A. We were talking about a lot of coal mining machinery just outside of Seattle. There is an abandoned coal mine and we were trying to sell that to North China. About this time shipping became a problem, so Takahashi advised me: How about shipping it to Vladivostok or the Netherlands East Indies, and I was advising him that that was out of the question. There was no inference of violating any rule or regulation of the United States government.

Referring to "quicksilver" I was not able to do anything.

Q. Referring to your letter of July 15, you say: "On the other hand, Shokosho said that even if our price was a little higher", what is Shokosho?

A. It is a department in the government that

(Testimony of Edward Y. Osawa.)

handles all imports and exports. I was endeavoring to comply with the government regulations if we were able to get exports out or imports in.

I did not at any time or at any place consort with Charles T. Takahashi, M. Ikuta or Koh Kohno, otherwise known as Willie Chang, and H. M. Kiang or any one of them, to violate any law or regulation of the United States of America.

With reference to the shipment of these three tanks, I didn't intend directly or indirectly to violate any law of the United States or any rule or regulation. I was not in the United States when application was made to the government for a license to ship these three tanks into China. I was in Japan. Irrespective of where I was, I did not arrange or endeavor to arrange for the shipment of these three tanks to China for transshipment to Japan. I didn't at any time or place with reference to these three tanks contemplate or make any false statement or declaration to the United States of America, to the Department of State, Department of Customs or any officer thereof. [123] I did not at any time violate, intend to violate or have a secret or concealed intention of violating the proclamation of the President of the United States of America made by the President in the interest of National Defense pursuant to section 6 of the Act of Congress approved July 2, 1940. In my correspondence or telephone conversations with Mr. Takahashi there was no intent, actual or concealed, that there should be transhipped out of China these three

(Testimony of Edward Y. Osawa.)

tanks if the license was issued to ship them to China.

When I arrived in the United States about November 2, 1941, I contacted Mr. Takahashi. I wired him from Vancouver and asked him to bring \$200.00 to the boat when it arrived in Seattle for the purpose of paying duty on gifts and merchandise that I got while in Japan and he met me at the boat. Before the boat docks all passengers are required to make a declaration of baggage, and I went to the trouble of listing every item, showing what case or what suitcase or what trunk they were packed in, and I made two copies. One I turned over to the ship who in turn turned it over to the Customs Agent and I kept one set for identification.

Exhibit A-2 entitled "Baggage declaration and entry" is one of the copies prepared by me for delivery to the Customs Agent. I divided the items and noted them in large trunk, certain articles in wardrobe trunk, itemizing each one, certain items in the steamer trunk, certain parcels in a suitcase, carton, and so forth and so on.

Referring to Exhibit A-1, a letter dated October 19, 1941, which refers to six pairs of silk stockings, these stockings were being brought in by me and were the ones that Mr. Takahashi's sister-in-law was sending to his wife and sister-in-law in the United States and had asked me to bring over here for them. [124] These stockings were listed The stockings referred to in the sheet of my listing "3" are the silk stockings referred to in Exhibit

(Testimony of Edward Y. Osawa.)

A-1. I had an invoice for the stockings which carried the price.

When I reached the dock and after the boat landed I had some difficulty in locating the various trunks, suitcases and bags. The ship gave me so many packages and when I got down on the dock and after the package was unloaded, according to the ship's report I was two cases short. These were boxes that were delivered direct to the ship from the store, and I wasn't sure, and I was looking around for those two. Mr. Takahashi helped me in that search. I had with me copy of my baggage declaration corresponding to Exhibit A-2, and during that search Mr. Takahashi and I passed that document back and forth between us or looked at it together.

(Adjournment until Tuesday, October 6, 1942).

EDWARD Y. OSAWA

a witness called on behalf of the defendants, having been previously sworn, resumed the stand for further examination, and testified as follows:

Direct Examination

By Mr. Bassett:

I wired Mr. Takahashi from Vancouver asking him to bring \$200.00 down to the dock so I could pay duty for gifts and presents that I had brought back from Japan.

(Testimony of Edward Y. Osawa.)

Referring to Exhibit A-1, being the letter signed by Mary and addressed to Chis and Chic, in leaving the boat in the excitement I must have left it behind. I gathered a lot of papers up and threw them in my briefcase and a lot of scrap that I thought was there I just threw in the basket and came [125] along. I thought at the time this letter was in my briefcase. I intended to deliver it. I arrived on November 2. The Customs agent did not take any papers from me other than what they took on November 2 at the dock, nor did they question me between that period and December 7, 1941. I was arrested early morning of December 8. Mr. Takahashi was arrested a few hours before. The Tokyo office and the Mikuni-Shoko Company in Tokyo were not connected. They were about a mile or a mile and a half apart.

Cross Examination

By Mr. Dennis:

I was general manager for Takahashi & Company. At times I had to do with sales. I had a certain part in selling the thirty-two tanks. They were purchased through Mikuni-Shoko Company for the Japanese army and the Japanese navy. We didn't know it at the time of the sale, but by the Fall of 1940 we knew they were intended for the Japanese army and navy.

Referring to new storage tanks, at the start it was eleven that they requested us to purchase. I didn't know whether they were intended for the Japanese

(Testimony of Edward Y. Osawa.)

army. I didn't know that the three tanks were for the Japanese government. So far as we were concerned we were selling them to Mikuni-Shoko Company. We presumed that they might be for the Japanese army, but had nothing to confirm it. I don't think that I ever saw the original of Exhibit #35, a letter written on November 24, 1940, because I was out of town most of those days. I may have been in California, New York, Washington, Kansas City or Wyoming checking up on tanks, getting tanks to ship to Japan. And if I was in Washington, most likely trying to get a license. I had nothing to do with arranging for the manufacture of the three new tanks in question. After the order was placed I was informed where they were being manufactured and understood the [126] purchaser was Mikuni, but even today I do not know whether they were for the Japanese navy or army. In January, 1941, I can't say for sure, I might have known.

Referring to plaintiff's Exhibit A-10, I didn't go to see Mr. Ballinger about that, nor anybody in the Customs House. On February 8 I signed an application in Washington for a license for the three new tanks that are in question in this case and put in the name of the consignor as C. T. Takahashi & Company. The application was prepared in my attorney's office in Washington and presented to the Division of Controls. At that time I learned enough to know that a license would not be given. I was informed by our attorney that they were rejecting practically ninety-nine per

(Testimony of Edward Y. Osawa.)

cent of applications, so that our chance of getting a license was very small. They were objecting because of the national defense. The information I had was that the Government did not want to see any steel going out of the country at that time. However, some licenses were granted and they said we might be able to get it although they doubted it, so on March 7 I presume that the attitude of the United States government was against the shipment of these three tanks and I conveyed that information to Mr. Takahashi. When I reached Japan I met Kohno there. He was employed by Mikuni-Shoko Company. My main business in going to Japan was to close our office and to clean up the Tokyo business that we had pending there and additional business, if we could get it directly. Kohno's name when he was in Shanghai was Willie Chang, which is a Chinese name. I never met Kiang, nor anyone connected with the Hua Hsin Company, nor did I have any telephone communication with the Hua Hsin Company. All I knew about the company I got from Kohno and Acuna.

Referring to plaintiff's Exhibit #9 for identification, I [127] first saw that in Tokyo. I think it was delivered to me at my hotel by one of Mikuni's men, and I brought it with me from Japan for the purpose of showing *to* to Mr. Takahashi.

Mr. Dennis: I will offer plaintiff's Exhibit #9

Mr. Crandell: Our objections have been noted.

Mr. Griffin: Osawa's objection has heretofore been stated.

(Testimony of Edward Y. Osawa.)

The Court: Objection overruled. Exhibit #9 is admitted.

(Whereupon letter dated July 4, 1941, previously marked for identification as Plaintiff's Exhibit "9", received in evidence).

(Plaintiff's Exhibit #9 read to the jury by Mr. Dennis).

Witness continuing: The reference to Mr. Chang in that letter was Kohno. I had never met M. H. Kiang. Referring to "Payment: Deduct U.S. \$71,700 from our credit account", Hua Hsin Company did not have a credit account, and at this time Mikuni-Shoko Company had no credit account. I commented to the person handing me the letter that the Hua Hsin Company had no credit account. I called up Mr. Ikuta, who arranged with Hua Hsin Company for us. I told him that this was in error because of the fact that when Mikuni had that credit with us I paid them back in yen. Later on Ikuta asked me if I would give him the dollars back and take back my yen, which I refused, so there was no credit account of any kind, nature or description on these three storage tanks. I do not know whether the characters at the top of the letter are Chinese or Japanese. I cannot read it no more than you can.

Q. Did you ask Ikuta why that \$71,700 was in that letter.

A. Well, he told me that he had made arrangements with this Hua Hsin Company who would give

(Testimony of Edward Y. Osawa.)

him that dollar exchange [128] provided that we gave him the credit, and we told him that we would not agree to those terms because we had no use for yen in Japan ourselves.

Q. So he had agreed then, Mr. Ikuta had agreed to put up the \$71,700 for the Hua Hsin Company, hadn't he?

A. I don't think you understood my explanation of last time. I traded him yen for these dollars they had over here. He wanted to trade it back so that he can have dollars in Shanghai.

Q. But Mr. Ikuta had agreed to put up the \$71,700 for the Hua Hsin Company, hadn't he?

A. No, he made arrangements for Hua Hsin Company to give me \$71,700 in dollars for which he would give me the yen. That is the arrangement that he made, but I refused it. While in Tokyo I had telephoned Mr. Takahashi. I may have mentioned something about these new storage tanks in my conversations. I think the matter about the Hua Hsin Company was cabled to me from Mikuni's representative direct. I talked to Mikuni before they cabled it and they told me they had obtained this connection for me. I saw the cable while I was in Japan.

Mr. Crandell: I have a witness here who would like to leave. May I put him on?

The Court: All right.

HARRY GIVAN

a witness called on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crandell:

My name is Harry Givan. I am in the insurance business. I am acquainted with Mr. Takahashi and Mr. Osawa. I have known [129] them about six years and know their business associates generally in the City of Seattle and vicinity. I know their reputation among those associates for honesty and for being law-abiding citizens. That reputation is very good.

Cross Examination

By Mr. Dennis

I don't know their associates in Japan.

(Witness excused.)

EDWARD Y. OSAWA

a witness called on behalf of the defendants, having been previously sworn, resumed the stand for further examination and testified as follows:

Cross Examination

By Mr. Dennis:

Referring to Exhibit #14, I wrote that letter and sent it to Mr. Takahashi and the statements contained therein are true.

Referring to plaintiff's Exhibit #15, it was written by me and mailed to the defendant Takahashi and the statements therein contained are correct.

(Testimony of Edward Y. Osawa.)

Referring to plaintiff's exhibit #16, I wrote that letter and mailed it to the defendant C. T. Takahashi and the statements in that letter are correct.

In one of those letters something was said about doing business with Mexico. Some time in July, 1941, I heard from Mr. Takahashi about doing business in Mexico. He either wrote me or told me on the telephone that he was trying to make connections in Mexico and had sent Mr. Shenker down there to see if he could not do business there. I think he said he was trying to sell these three tanks and at the same time establish some business connection in Mexico so that we could do business between Mexico and Japan. The reason he was doing business in [130] Mexico was the embargo that was on in the United States. I agreed it was good business if we could buy things in Mexico and ship them to Japan.

Q. Despite the fact that it was contrary to the National Defense of the United States of America?

A. Well, the defense of the United States of America, at that time had nothing to do with the material in Mexico.

Q. The fact that steel was being shipped out of Mexico to Japan had nothing whatsoever to do with the National Defense in your opinion?

A. Well, our competitors were all doing business, the Standard Oil was doing business and so were all of the oil companies, so why shouldn't we?

Q. So you figured that if you could slip it through, it would be all right?

(Testimony of Edward Y. Osawa.)

A. That was just business.

I also speak in one of those letters *are Vladivostok*, and said it was no use to ship to Vladivostok because the Gunbu didn't have any control there. Gunbu is the military authority and material couldn't be shipped from Vladivostok to Japan or China. At this time I think it was China.

Referring now to plaintiff's Exhibit #17, I think the first time I saw this letter was just prior to the previous trial. I never saw it in Japan or talked with Mikuni-Shoko Company about it. I talked with them about "the three new tanks, 80's and accessories which we ordered from you last year", and the only information I gave on that was that I told them "why not offer these tanks which we have as a starter for our connection in Shanghai". The military authorities were hounding Mikuni every day to get these tanks. They were asking them when they were coming, why couldn't they get them through, and so forth, [131] and Mikuni in turn would relate that information to me. Yes, I wrote "Of course, they will overlook if we can not ship because of definite embargo like our tanks but even on tanks they are hounding us every day", and I also wrote "we sure are on a spot on the three tanks" and that was a fact. The military authorities were asking Mikuni all of the time and they were relaying that message to me.

When I was in Washington I didn't tell anyone that the tanks were being purchased for the Government of Japan.

(Testimony of Edward Y. Osawa.)

(Photostatic copy of letter dated April 4, 1941, marked for identification as plaintiff's Exhibit "40")

Lieutenant Colonel Saito did not vouch for my entrance to Japan. I never met him there or in this country. I understood that it was Mr. Ikuta of Mikuni who guaranteed my entrance to Japan.

Redirect Examination

By Mr. Griffin:

Q. When Mr. Dennis inquires from you that when you were in Washington in February, 1941, you gained the impression that steel products, of which these tanks are steel products, would not be permitted to be shipped to Japan, did you gain the impression they would not be permitted to be shipped to the Orient? A. No, sir.

Q. Did you gain the impression they would not be permitted to be shipped, however, to any port over which the Japanese had control?

A. No, I did not.

I found that the government was permitting certain New York competitors to ship direct to Japan. Our customer was Mikuni-Shoko and I learned that their customer was the Japanese army or [132] navy or the Japanese government. At the time of the sales of the original tanks there was no regulation against shipping direct to the Japanese government, army or navy, but even no permit was required. The policy of the State Department at that time was to continue shipments to Japan. I

(Testimony of Edward Y. Osawa.)

brought Exhibit #9, dated July 4, 1941, with me upon my return from Japan.

Q. Was one of the reasons that you were bringing that, and that the deal had not been consummated, due to this claimed credit of \$71,700?

A. They were to give me another contract when the actual deal was consummated, in lieu of this one. No deal was consummated with the Hua Hsin Company. As of July 4, 1941, I had not previously settled with Mikuni-Shoko Company the advance they had made upon those tanks. What they were proposing to do was, by some credit between themselves and Shanghai, to re-establish this credit with Takahashi's concern in the United States as a down payment on the tanks. I used the term "We wouldn't go for that", meaning I refused to consummate the deal upon that basis. I was endeavoring to and did exchange our yen into dollars to get them out of Japan and get the Takahashi money back into the United States. I did not consummate any additional business while in Japan so far as an actual shipment is concerned. Because of the necessity for State Department permits nothing was shipped.

(Recess.)

I made comment to Mr. Ikuta to the effect that I intended to comply with all of the rules and regulations of the United States of America in regard to either exports or imports. In Exhibit #9, with reference to "For your information, we might as

(Testimony of Edward Y. Osawa.)

well add there that these tanks are to be imported for the local storage purpose and will not be re-exported to any country [133] with whom you are not on friendly terms" that correctly stated the position of myself and the Takahashi Company. I informed them from the very first that we would not be interested in trans-shipment of any articles to China and Japan. On July 4, 1941, there was no country with which the United States was at war and I was familiar with the declared neutrality of the United States at that time. I had no idea, in Japan or elsewhere, or impression, that even if a permit was granted and a license granted to ship these tanks to the Hua Hsin Company in Shanghai that they would be reexported for any purpose whatsoever. At that time, July 4, 1941, Japan was in control of the port of Shanghai. I did not anticipate that a license would be granted at that time to ship to Shanghai. I did not know until I came back to the United States what effort was made to dispose of those tanks in the United States at the same time this application was pending.

Recross Examination

By Mr. Dennis:

Q. What was your idea in regard to shipments to any port over which the Japanese government had control?

A. I concluded myself—I thought that the United States government would not issue any permit to any territory occupied by the Japanese

(Testimony of Edward Y. Osawa.)

forces. I told that to the Mikuni-Shoko Company. I told them we will try but I doubt if we can get it. By "we" I meant Takahashi and myself, and we did try.

Referring to letter of July 4, 1941, the conversation was between Ikuta and myself.. It was not Mr. Ikuta who was to give me another contract. He informed me he would get another contract from Hua Hsin Company for me.

Mr. Crandell: We have a short deposition which it was stipulated we could read into the record.

[134]

The Court: You may.

(Whereupon the testimony of Mrs. Kawaguchi upon the former trial was read by Mr. Griffin and Mr. Bassett as follows:)

SWORN TESTIMONY OF MRS. KAWAGUCHI

My name is S. Kawaguchi. I lived in Seattle until recently. I lived there all my life. I went to the Seattle schools. I am acquainted with Mr. Takahashi. I started to work for him in 1929 and so continued until the time of his arrest. My work was general secretarial work.

Referring to plaintiff's Exhibit #19, I have seen that before.

The Court: It is the same exhibit with the pencil marks that we had before?

Mr. Bassett: Yes.

(Deposition of Mrs. Kawaguchi.)

(Whereupon the exhibit referred to was passed to the jury for their inspection)

Continuing: Upon that exhibit there is type-written "Japan" and opposite is written "China". Down below is written in typewriting "C. T. Takahashi & Company", and behind it is written "China Imp", then "Mikuni-Shoko Company" and on the same line is some Chinese name. These are all in my handwriting. I re-typed this with corrections I had made in pencil. In other words, I used #19 for a model, and with changes conforming to that pencil writing.

(Whereupon the cross examination was read into the record by Mr. Griffin and Mr. Bassett as follows:)

I typed the new application in the course of my duties as an employee of Mr. Takahashi.

Referring to Exhibit #19, I do not remember why I wrote [135] "leave out Sonken Galamba".

Q. Referring to another line where it says in typing "storage purposes by Mikuni-Shoko Company", you will notice there is a parenthesis after the word "purposes" and ending after Mikuni-Shoko Company, and right above that are the words in pencil "leave out", did you write that?

A. That is my hand-writing. I am unable to say at whose direction I did it.

ERVIN E. NICHOLS,

a witness called on behalf of the defendants, first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bassett:

My name is Ervin E. Nichols. I live at Port Angeles and am retired from business. I was formerly in material business, contracting and mill business. My mill was at Carlsburg, Washington. I have known Mr. Takahashi about seven years. I met him in a business way, and also socially. I know his reputation for honesty and veracity in the community in which he lives. It is very good.

Witness excused.

JOHN H. ZUMWALT,

a witness called on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bassett:

My name is John H. Zumwalt. I live in Seattle. I am an Immigration Inspector, stationed in Seattle. I know the defendant Edward Y. Osawa. I talked with him prior to leaving for Japan in 1941, with reference to the matter of leaving the [136] country without obtaining a passport. I told him he should not leave if he could get one. He said he didn't have time, so I told him if he wanted to

(Testimony of John H. Zumwalt.)

to go ahead without one. He could do so and prove his citizenship upon his return to this country. He told me that he was going to Japan to close up the Takahashi office there.

WILLIAM SHENKER,

a witness called on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crandell:

My name is William Shenker. I live at Portland, Oregon, and at present I am engaged in the purchase, manufacture and sale of steel tanks. I am a native-born American. I am acquainted with Mr. Takahashi and have known him about eleven years. I have known Mr. Osawa a like period of time. I represented the C. T. Takahashi Company in Portland as their buying agent from 1934 until about 1939. Therefore my capacity changed to that of operating their office in Portland. My Takahashi had another office in Vancouver, one in Portland, and I met the representative that operated the Tokyo office.

I first heard of the three new tanks in question in the Fall of 1940, when the negotiations for the purchase of those tanks originated. The tanks were manufactured by the Graver Tank and Steel Company in their East Chicago, Indiana, plant.

(Testimony of William Shenker.)

They were ordered through the Sonken Galamba Supply Corporation, at their Kansas City office. Mr. Takahashi made the arrangements. During the year 1940 and until the office closed I was in Seattle at least once every week, except when I was traveling in the East or Mexico on company business. During all of the time that I have known Mr. Takahashi the name China Import and [137] Export Company was in use. There was no sinister motive in the use of that name. The general policy of the Takahashi Company was always to comply with all rules and regulations promulgated by the Federal, state or other authorities. Mr. Takahashi gave those instructions on many occasions. I was familiar with the first application for a license to ship these tanks to Japan which was made February 7, 1941. I was in Washington, D.C. in the office of Ira S. Ewers, the attorney retained by our firm, at the time the first application was drawn. He drew the application and filed it. It was rejected with the provision that there was something irregular on the application and a new form had to be utilized. A new form was secured and filed either in March or April. It was also prepared by Mr. Ewers and it was rejected. After it was rejected an appeal was filed. Mr. Takahashi authorized the appeal and I made the arrangements with Mr. Ewers. When I was in Washington the Division of Controls of the Secretary of State office was the department I was in touch with. I had infor-

(Testimony of William Shenker.)

mal discussions with men in this department. I was with Mr. Osawa on these occasions.

Mr. Dennis: May I ask a question of the witness?

The Court: You may.

Mr. Dennis: What was the date of the rejection?

A. To the best of my recollection the rejection was the latter part of April, Mr. Dennis.

Q. And the appeal?

A. I thought sometime in May the appeal was rejected.

Witness continuing: Immediately following or about that time I made an effort to sell these tanks to the Federal authorities of the United States. That offer was made first to an officer, I believe he was a Colonel by the name of Scott, in [138] the Division of Controls office in Washington, D.C. I made the offer because I was convinced through my conversation with him that the application for the shipment of tanks to Japan would be rejected. I also made an attempt to sell these tanks to the British Buying Commission at their office situated, I believe, in the upper floor of the Willard Hotel in Washington, D.C. I was referred by them to the New York office of the Commission. I gave this information to Mr. Takahashi and he instructed me, by telephone, to offer the tanks to the British Buying Commission in New York. That was the

(Testimony of William Shenker.)

last half of April, 1941, but they were not interested in the purchase. I also went to Vancouver, B.C. for the purpose of disposing of the tanks in Canada. Mr. Takahashi instructed me so to do. Then I made efforts to dispose of them in Mexico. I went there early in May, 1941, and spent six weeks to two months. I did not consummate a sale. Mr. Okada came to replace me about two or three days prior to my departure. I gave him a full oral report of what I had done.

Referring to Exhibit A-4, entitled "contract of sale," my attention was called to that after it was consummated. I think there was about two-thirds of that material furnished under those instruments. That contract was cancelled by telegram. We received information to the effect that the purchaser was placed on the so-called black list by the State Department. Exhibit marked A-5 constitutes that information. Exhibit A-6 is the telegram used by Takahashi & Company to cancel that contract. I did not prepare the telegram, but it was shown to me prior to transmission. I approved that telegram. You see I first introduced this firm to our company. Cancelling that contract with the black list firm was absolutely consistent with Mr. Takahashi's policy. I made other efforts to sell the

[139]

three steel tanks in question. Prior to leaving for Mexico I had communicated with the Standard Oil Company, the Shell Oil Company, Portland Gas and Coke Company, I believe the Clipper Gasoline

(Testimony of William Shenker.)

Company, to see whether or not they could utilize this type of new steel tank. They were not able so to do. These tanks were riveted tanks and the large gas companies preferred welded tanks.

(Group of letters consisting of nine pages marked for identification as defendants' Exhibit "A-11")

This correspondence has to do with efforts to sell the three tanks in question to the Equipment Corporation of America.

Exhibit A-11 offered and refused, to which an exception was taken by Mr. Crandell.

Cross Examination

By Mr. Griffin:

The relationship between me and C. T. Takahashi & Company was an independent contractor and never that as a salaried employee. I mean by that that in addition to the work I had been doing for Mr. Takahashi that I did other work on my own behalf. Just previous to my meeting with Mr. Osawa in Washington a restriction had been imposed upon the exportation of scrap steel of certain qualities from the United States to Japan. I believe that took place either in September or October, 1940. Previous to that there were no restrictions at all to my knowledge upon exportation of even scrap steel to a foreign country, including Japan. Prior to the embargo there was a great amount of scrap shipped to Japan. We were but a very small operator in the field. The first restric-

(Testimony of William Shenker.)

tions merely curtailed the shipment of No. 1 heavy melting scrap which is a certain trade name classification. Thereafter a new ruling came out prohibiting [140] the shipment of any type of scrap. Then came a ruling two or three months later prohibiting the shipment of new steel. Prior to October Takahashi had orders for and was shipping used steel tanks to Japan. In December, 1940, the three new tanks had been ordered from Sonken Galamba Supply Corporation. I don't know whether they were in process of manufacture. After that order was placed and we had been advised that a license was not required for used steel a new regulation came out from the Government, dated February 8, 1941. The application is shown in Exhibit #29, part 3. That application was held by Mr. Ewers until the 15th of February, or thereabouts, when it was filed. Then about a month afterward it was returned to us with the statement that certain parts of it were inadequate. The objection was to the form, not the substance. Then I went back to Washington and secured the services of Mr. Ewers again to determine the proper type of form to be used and had the new form of application filed. That new form is shown in Exhibit #29, part 2. That is the second one that was filed. Government's Exhibit #19 is the original of Exhibit #29, part 3. And upon that renewal application, started on February 8, the license was rejected on #19 and #29, and on that an appeal was taken. At that time I gained a definite impres-

(Testimony of William Shenker.)

sion that most of the applications for steel to the Orient would be rejected. I was advised by the Division of Controls that the Government was granting a few special licenses to competing New York concerns shipping direct to Japan. I discussed with Lieutenant Colonel or Major Scott the possibility of disposing of these tanks to the United States government. I was unable to dispose of them to the Government.

Recess.

By Mr. Griffin: [141]

The British Buying Commission had offices in both Washington and New York and I contacted both offices to ascertain if I could dispose of the tanks to the British Buying Commission. Then I contacted various oil companies in the United States to see if they could use the tanks.

Q. If you did not think the application would be granted what was the reason for the appeal?

A. The reason was the fact that the materials in question were already fabricated and manufactured and had been sold bona fide before any embargo was announced, and it was our thought at the time that there was a possibility that they would permit the shipment because they had been made and completed while it was legal to do so. That was the basis upon which our attorney in Washington was proceeding. After the denial of the appeal and our inability to dispose of the tanks and on my return to Seattle and before I went to Mexico I negotiated

(Testimony of William Shenker.)

with James Sullivan, General Manager of the Equipment Storage Company in Chicago, Illinois, for the physical storage of the tanks.

Referring to sheet 1 of Exhibit A-11, I was handed that sheet in the office of the Takahashi Company in Seattle. Last night I examined such files as Mr. Takahashi now has and found and brought to court the various documents covering the Sullivan-Equipment Company transaction on storage. I made arrangements with the Equipment Storage Company for the physical storage of the three tanks in question. I tried to sell them to them in April, 1941, when I first negotiated the storage. Eventually one of the three tanks was sold to the Equipment Corporation of America. I sold one of the other tanks to the Portland Gas and Coke Company of Portland, Oregon. I sold the other one to the Shell Oil Company and it went to some location in California. [142]

Cross Examination

By Mr. Dennis:

Q. I want to try to get these dates straightened out.

A. In January, 1941, I was in Portland, Oregon, or Seattle and possibly for one or two days during that month in San Francisco. I left for Washington on the night of the 5th of February and was there about five or six days. From there I came back to Denver. I went back to Kansas City and then to Denver, Denver into Portland and then to

(Testimony of William Shenker.)

Seattle. A great deal of it was by air. I was a couple of days on the route back. It might have been three or four. I was down in San Francisco part of the time in February, 1941. I might have spent a day in Vancouver. I was perhaps five or six half days in Seattle in February, 1941. I was in Portland all of the year 1941 that I wasn't traveling. I would say perhaps I was ten to twelve days in Portland during February, 1941. In March, 1941, I was in Portland or Seattle or San Francisco. During the month of March we were shipping commodities out of San Francisco and out of Portland and out of Seattle. I had charge of the purchasing of those commodities. So my attention would be directed to whichever town required *by* time and attention. The last part of the month is when I left for Washington, somewhere around the 20th. I stayed in Washington two weeks or more. I was in Washington until after the application was filed, I think the 16th of April. I left the day the application was filed. From there I went to New York City and spent a day. From there I flew to Chicago; that was about the 18th or 19th of April. I was in Chicago not to exceed two days and a half. From Chicago I went back to Seattle. I was in Seattle the latter part of the month of April and stayed in Seattle and Portland during the rest of that month of April, except that I went to Vancouver [143] for a day or two. Then I left for Mexico, that is, in the latter part of April or early May. I was there, to the best of my recol-

(Testimony of William Shenker.)

lection, until the middle of June. I think I left Mexico the last week of June. From Mexico I went to Texas by plane. I spent a few days in Houston and a few days in Dallas and Corpus Christi; perhaps a week or so in Texas. From Texas I went to Denver, Colorado and spent two or three days; from there up to Casper and from Casper, Wyoming, back to Portland. I stayed in Portland practically all the time except for flying up to Seattle, then returned to Portland and stayed until some time in September or October, when I went back to Chicago. From about the middle of July I was in Seattle, Vancouver, or Portland, except for one or two occasions when I went down to San Francisco to try to sell these tanks to the oil companies. All the while I communicated with Mr. Takahashi by letter and telephone. There might have been some telegrams. Mr. Takahashi did not tell me anything in regard to any sale in China. There was no mention to me of the Hua Hsin Company during that time. I never heard of that company until the previous trial of this case. When the embargo went on the sales price of scrap steel was more affected than steel plates, because there was no outside demand and the local mills reduced their prices immediately. It is not true that this shipment to the Prevedora Company was cancelled due to the fact that it could be sold for just as much here as it could down there in Mexico.

Q. You could take and sell that plate, pay the

(Testimony of William Shenker.)

freight on it to Mexico and get more money in Mexico than you could in the United States?

A. At that time this firm was paying more for this type of plate, because they were getting the cream of the plate, whereas if they came to this country to buy they would have to [144] buy all of it. The plate referred to had nothing to do with the three new steel plate tanks. The only person whose name I recall at this time to whom I spoke in Washington, D.C. in regard to the sale of these three new steel tanks is Colonel Scott before mentioned. I spent about half an hour with him. In New York City I spent about thirty minutes, until I got to the man I was told who could discuss the matter intelligently, and then I was told that they had no market. I spent about ten minutes with the latter, but he recommended that I take it up with the Canadian authorities. I didn't personally talk with the Canadian authorities, but I got our Manager in Vancouver to take it up with them. I personally talked with the Shell Oil Company, but I do not know the name of the individual I spoke to, but he bought the tanks and we were paid for them. The sale was made in October, 1941. In March he didn't care for the tank, but in October he bought it. There was no difference in the market between April and October. The reason for the delay was that they were trying to get a welded tank which they thought they could get delivery on, but when the delay in deliveries came up, from the mills, they resigned themselves to using a riveted

(Testimony of William Shenker.)

tank in lieu of a welded tank and bought what we had on hand for spot delivery. The next company I tried was the Standard Oil Company. I talked with a personal friend of mine who was Manager of the Portland office, a Mr. Burns. The next was the Portland Gas and Coke Company. I now know the name of the person in that company that I talked with, because I have been doing a lot of business with them, but at the time of the last trial I did not.

I practiced law at one time.

The form shown by plaintiff's Exhibit #29, part 3, was not the proper form, and the next one, dated April 16, was used. [145] The difference was that certain information had to be attached that was not on the original. I did not tell Mr. Ewers that the name of the purchaser was the Japanese government. I did not know then that the Government of Japan was the actual purchaser and do not know that at this time.

THOMAS MASUDA,

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bassett:

My name is Thomas Masuda. I was born in Seattle and have lived here all my life until recently. I attended the fourth or fifth grade school, then I

(Testimony of Thomas Masuda.)

finished the rest of my elementary high school at Ellensburg, Washington, and my university education at the University of Washington, from which I am a graduate. I was admitted to practice at the Bar of the State of Washington in 1929, and was practicing here until the time of my evacuation. I am now located at Poston, Arizona, which is the W.R.A. Relocation Center for Japanese.

I am acquainted with Mr. Takahashi and Mr. Osawa, the defendants in this case. During my practice I acted as Mr. Takahashi's attorney. Mr. Takahashi called on me some time about the 3rd day of November, 1941, in connection with some request that had been made upon him by the Customs Department or agents of the Customs Department of the United States. I think it was the 2nd, rather than November 3rd, anyway it was a Sunday. He had some difficulty in reference to Mr. Osawa's entrance into this country when he returned on November 2. The Customs had questioned both Mr. Takahashi and Mr. Osawa and he wanted me to find out what the whole situation was about. He asked for advice about certain papers that the agents wanted. He was [146] willing to deliver the papers and I advised him to do so and cooperate fully with the Government and assist them in their investigation. So far as I know he made available to the agents everything that they wanted in the way of papers and documents.

(Testimony of Thomas Masuda.)

Cross Examination

By Mr. Griffin:

I was not able to find out from conferences with Mr. Atherton or the Government officers what they were looking for or what they were investigating for.

Redirect Examination

By Mr. Bassett:

I did not know what Mr. Takahashi had been arrested for.

Witness excused.

Mr. Bassett: We would like to recall Mr. Takahashi.

The Court: Mr. Takahashi may take the stand.

CHARLES T. TAKAHASHI

Recalled as a witness on behalf of the defendants, having been previously sworn, resumed the stand and further testified as follows:

Direct Examination

Mr. Dennis: Of course, I will reserve the right to cross examine him, not only on this but on other matters.

Q. (By Mr. Bassett) Before we adjourned Friday "A-10" was incomplete and since that time a letter has become a part of that exhibit which the jury has not had an opportunity of hearing. I will ask you to state whether or not that is a letter written by you in connection with this application?

(Testimony of Charles T. Takahashi.)

A. Yes, sir.

Q. So that the jury may know what we are talking about, I wish you would tell them what application that is.

A. That is the application for eighteen old tanks which the [147] State Department returned to us "no license required".

Q. This is a letter which you wrote in connection with that application?

A. Yes, sir. And the photostatic copy of a letter on top is the answer of Mr. Ballinger, the assistant collector, to my letter.

Mr. Bassett: At this time I would like to read that letter to the jury, your Honor. It wasn't read before.

Members of the jury, the letter of Mr. Ballinger was read to you but at that time this letter wasn't a part of the exhibit. It wasn't available, but since has been made a part of the exhibit.

This is dated "December 16, 1940", addressed to Mr. O. W. Dam, Deputy Collector of Customs, Federal Building, Seattle, Washington.

(Letter read to the jury)

Referring to defendants' "A-11" for identification, which purports to be a group of letters, that is, correspondence carried on by my company with the Equipment Storage Corporation. One of these papers is a wire signed by me as President of this Company which we sent. The yellow sheets are copies of letters we sent to the company. The letters addressed to our company were received by me

(Testimony of Charles T. Takahashi.)

at the time mentioned in each letter. The correspondence refers to the three new tanks which are involved in this prosecution.

Mr. Bassett: We now offer in evidence defendants' A-11.

The Court: The court will admit the Exhibit A-11, upon the ground that by numerous questions they have already been put before the jury.

Group of letters, previously marked "A-11" for identification, received in evidence. [148]

(Whereupon Mr. Bassett read Exhibit A-11 to the jury)

Q. (By Mr. Bassett) Mr. Sullivan's first letter speaks of not letting certain people find out from them where these tanks came from or where they were manufactured. What was the reason for that?

A. The main reason of that was in our business, our whole import and export business, we always try to keep the source of our supply from our competitors. In other words, the tanks are made by the Graver Tank people and we don't want our competitors to know who is the maker of our commodity. We are the owners and if they want to buy a commodity we sell it and it is our own business who makes it.

Mr. Bassett: At this time the defendant Takahashi rests.

Mr. Griffin: The defendant Osawa rests..

The Court: Is there any rebuttal?

Mr. Dennis: No rebuttal, your Honor. The Government rests.

Jury excused until 9:30 the following morning.

The Court: The jury is gone. All right you may proceed.

Mr. Griffin: The defendant Osawa, at this time, the case being closed, moves for a directed verdict of Not Guilty in behalf of that defendant, separately as to each and every count of the indictment, on the grounds and for the reasons stated at the time the motion was made at the close of the case for the Government and now, since the evidence has developed beyond any question, that to submit any issue in this case to the jury, so far as the defendant Osawa is concerned, would be to permit the jury to speculate, and to base an inference upon speculation and suspicion without any governing basic fact upon which it is warranted or could be warranted in finding a verdict of guilty.

That applies with reference, the motion, with reference [149] to the conspiracy count because there was no evidence in this case, either written or oral, of the existence of any conspiracy as between the defendant Osawa and any co-defendant at all. At most, it would be inference based upon inference and speculation based upon speculation, and presumption founded upon presumption, and each presumption omitting the primary presumption that all men are supposed to be honest in their dealings.

It is the position of this defendant that there is nothing in the record in this case that the government has made, nor in the case that the defendant

has made, without rebuttal, that in any wise warrants submitting the matter of conspiracy on the part of the defendant Osawa to the jury. That is Count 1 of the indictment.

As far as Count 2 is concerned, and the same is true of Count 3, they are not based upon conspiracy but upon a physical act committed.

The evidence in this case shows, without any dispute, that Osawa had nothing to do with any physical act insofar as a crime is charged in Count 2 or Count 3. Actually at the time of the claimed charge that a physical act was committed within the jurisdiction of this court, and particularly within the District of Columbia, Washington, D. C., or in Seattle, Washington, he was without the jurisdiction of the Court and not physically a party to the discussion of Exhibit A, the application attached to the indictment, had absolutely no connection with it nor anything to do with it.

And the same is true of Count 3.

In addition to that the defendant moves to be withdrawn from the evidence in this cause and from consideration by the jury of all the documents against which the basic motion has been made that they were wrongfully seized and permitted for [150] use, and introduced in evidence in this cause.

Mr. Bassett: At this time the defendant Takahashi renews the motion, as it involves the evidence, which he made at the close of the Government's case.

And at this time he moves for a directed verdict of Not Guilty as to each of the three counts, for the

reasons stated at the close of the Government's case, at which time I think Your Honor indicated that you did not desire to hear any further argument, that you had considered it all at the previous trial.

The Court: I didn't wish to hear any argument unless it was new argument that I hadn't heard.

Mr. Bassett: We have nothing new to offer, Your Honor, in addition to what we have already presented in the way of argument.

The Court: The motions interposed on behalf of the defendant Osawa and each of them are denied and overruled; and exception is allowed.

The motions and each of them interposed on behalf of the defendant Takahashi are denied and overruled and exception allowed.

(Whereupon at 4:40 o'clock p. m., a recess was taken until 9:30 o'clock a. m., October 7, 1942.)

Seattle, Washington

October 7, 1942

9:30 O'Clock A. M.

(The jury resumed their seats in the jury box and the following proceedings were had and done in their presence and hearing.)

(Whereupon counsel for the Government and counsel for the defendants argued the case to the jury, after which the Court instructed the jury as follows:) [151]

The Court: Members of the Jury, you have had this case somewhat longer than was expected. Those

of you who have served on juries before know that frequently cases last longer than they are expected to.

The Court appreciates the attention that you have given to this case. The Court knows that you are going to consider this case seriously as an important case; that you are going to determine the issue upon the evidence as it has been received under the instructions of the Court as to the law touching this case.

In Federal Court, different from state court, the rule as to instructions is that the Federal Judge instructs the jury after the argument and not before. And there is a reason for this rule in the Federal Court. There is another distinction between instructions in Federal Court and in state court concerning which you will be later advised.

You have heard the evidence in this case. You have heard the arguments of the counsel upon both sides. Jurors realize that they do not sit in a box to listen to the argument of counsel as though they were hearing a debating team, to determine the issue upon that side which makes the best speech. The jury has the same obligation that a Judge has when a Judge hears a case without a jury. And the Jury's obligation, like that of the Judge, is—regardless of the argument of counsel or regardless of which argument they think is the better, as an argument,—the Jury and the Judge should search the evidence to determine what the real fact is; and that is your duty.

It now becomes your further duty to listen to the instructions of the Court and then remember them. You will [152] receive no copy of these instructions. And when you retire to the jury room, you can only take with you your recollection of what the judge has said.

In this case there are two defendants on trial on three counts of the indictment. In each of these counts the defendants have entered a plea of not guilty, which places upon the prosecution the burden of showing beyond a reasonable doubt, as that doubt will be hereinafter explained to you, the truth of every material allegation of the indictment, beyond a reasonable doubt. You will later also have explained to you what is meant by "every material allegation of the indictment."

And you may be advised now—as the Court will later tell you—that an indictment is not a blueprint. An indictment is the method by which a grand jury, in behalf of the People of the United States, charges persons so that they may be advised of what they are charged with.

And if there be some immaterial matters in the indictment, the failure of the prosecution to prove those immaterial matters shall not be an excuse to any jury to free any guilty man or guilty men, shown by the evidence beyond a reasonable doubt to be guilty.

It is not the purpose of courts that if the prosecution proves the material parts of an allegation beyond a reasonable doubt that any defendant should

be released because some immaterial allegations have not been established.

In this case you will consider each count of the indictment separately and will vote as to each count [153] separately as to each defendant. The indictment against the defendants Charles T. Takahashi and Edward Y. Osawa, as I have stated to you, consists of three counts. You will later be given a copy of the indictments and later in these instructions I will more particularly describe the charges on each of the three counts. At this time a summary of the three counts will suffice.

The first count charges a conspiracy to violate the law and Presidential Executive Order concerning three steel storage tanks and accessories.

The second count, in brief, charges that these two defendants on trial and others not under arrest violated a certain executive order by designating China as the country of ultimate or final destination instead of Japan; it being charged that the defendants knew that Japan was intended as the actual country of ultimate or final destination.

The third count, in brief, charges these two defendants and other persons not under arrest with making false or fraudulent statements in connection with an application for a license to export the same three storage tanks and accessories, in violation of another Federal Statute which makes it a crime to make or cause to be made any false or fraudulent statements or representations in such application within the jurisdiction of any department or agency of the United States.

You are instructed that to find any defendant guilty of the offenses charged in the three counts or [154] any of them of the indictment, it is not necessary to find that each defendant personally committed all of the acts charged in such count or counts. If you find that any defendant aided or abetted or counseled or commanded or advised or induced or procured the commission of the crime charged in any counts or count, then that defendant is just as guilty as to that count as if he individually perpetrated the entire crime himself; and you must find him guilty as charged.

The issue to be determined in this case is of importance to the government and to the defendants and requires your careful thoughtful and honest consideration. It is your duty, and I am confident you will do your duty as jurors under the oath that you have taken to conscientiously, seriously, and free from prejudice and free from sympathy, return a true verdict under the evidence and these instructions as to each defendant and as to each count.

You can readily understand that the government can only be maintained by the endorsement of the law. You as jurors are not concerned with whether or not the law herein involved or the presidential orders or proclamations involved ought to have been enacted or issued or declared, nor are you concerned at all with any punishment that may be imposed under the statutes in this case in the event a verdict of guilty may be returned.

If congress, the law-making body, and if the president under the authority given him by con-

gress makes a law with relation to a particular policy or [155] rule of conduct or issues an executive order pursuant to any such law, it is necessary that the people should fairly and honestly live up to such law and such executive order. And it is necessary that the public officials, and jurors are public officials, should fairly and honestly enforce such laws and such orders.

You are instructed that it is not the policy of the law that a verdict of guilty should be returned against anyone on trial for any crime unless such verdict is supported by the evidence beyond a reasonable doubt; but it likewise is against public policy that any guilty persons or person should escape, if the evidence shows beyond a reasonable doubt that such person or persons are or is guilty.

It is the duty of the court to instruct you as to the law governing the case and it is your duty to take the law from the court and accept that to be the law as stated to you by the court, notwithstanding any statement or contention of any attorney as to what the law is or ought to be; and despite any opinion of your own that the law is different or ought to be different than the court states it to be. The mere fact that you may not have favor for any particular law or for any particular executive order can not rightfully be by you permitted to excuse any violation thereof.

And likewise, any opinion that may have been asserted that any law or any executive order should have been passed or issued before it was can not excuse any violation at all thereof after same be-

came effective. Even if it might have been better, if any [156] executive order had been issued before it was issued, such can not be any excuse for anyone violating same after it was issued.

You are instructed that the law presumes every defendant in each and every case charged with any violation of any law to be innocent until he is proven guilty by the evidence beyond a reasonable doubt. This presumption continues throughout the entire trial and until the jury has found that this presumption has been overcome by the evidence beyond a reasonable doubt.

The indictment returned herein is merely the method provided by law whereby the United States, through a grand jury and on behalf of the people, shall accuse one or more persons of violation of the law, and whereby the one or ones accused shall be advised of the accusations against them or him so that they or he may defend against such. The fact of an indictment having been found and returned by the grand jury against anyone gives rise to no inference that the one accused is guilty of any offense. The matter of guilt is the matter of proof. The indictment is the charge or the method of placing the defendants on trial.

The instructions that I give you are the method provided by law whereby the court shall advise a jury of the law applicable to the particular case and which must guide the jury in consideration of the evidence, and which must guide the jury in determination of what the jury's verdict shall be. These instructions are to be understood, interpreted

and applied by you as a connected body, and as an entirety. [157]

You will disregard any statement made by counsel on either side of this case as to what any testimony has been unless *born* out by your final recollection thereof. You are likewise to disregard any testimony which may have been stricken out by the court. You must likewise disregard any question or answer thereto to which the court has sustained an objection.

You have already heard me use the term, "reasonable doubt" and you undoubtedly are interested in knowing just what that means in law and just how strong the evidence must be to be said to be sufficient to convict. You are instructed that proof beyond a reasonable doubt does not mean the evidence shall establish the guilt of the defendants or either of them beyond all possible doubt. The law does not require absolute certainty of guilt before there can be a verdict of guilty at your hands.

The expression, "a reasonable doubt" means in law just what the words imply, a doubt founded upon some good reason. A reasonable doubt must arise from the evidence or lack of evidence. A reasonable doubt must not arise from sympathy. A reasonable doubt must not arise from a desire to avoid performing a disagreeable duty. A mere misgiving founded upon mere possibility does not constitute a reasonable doubt. Only such doubt as a sensible, honest-minded man or woman would reasonably entertain in an honest and impartial investigation to ascertain the truth about a matter of life

as serious as the one involved here would constitute a reasonable doubt. [158]

In order to warrant conviction of the defendants, or either of them, as to the charge against the defendants, the evidence need not be so strong as to exclude all doubt or possibility of error. But the evidence must be strong enough to exclude all reasonable doubt.

If after considering all of the evidence in this case, you can say that such leaves in your mind a firm and abiding conviction of the guilt of the defendants, or either of them, of the charges in the three counts of the indictment, or any of them, then you are convinced beyond a reasonable doubt as to such defendants, or defendant, as to such counts or count, and then it would be your duty to find the defendants, or such defendant, guilty of such count or counts. If not,—that is, if you do not have a firm and abiding conviction of the guilt of the defendants, or either of them, as to any count or counts, then you have a reasonable doubt and you should find the defendants, or that one, not guilty as to such counts or count.

It has sometimes been said that unless you are convinced of the guilt of a defendant to a moral certainty that you have a reasonable doubt. It is unnecessary, however, that the evidence prove either of the defendants guilty beyond every doubt because there are few, if any, things in the domain of human knowledge that can be established by such positive proof.

You are instructed that what punishment the defendants, or either of them, may receive in case they or either of them may be convicted is not to be considered by you in any respect or for any purpose in arriving at [159] your verdict. The matter of punishment is for the court alone as provided by law; and such can not in any wise properly be considered by you at all in arriving at the guilt or innocence of the defendants or either of them.

It has, however, been suggested in argument in this case that if the defendants are found guilty that they will be sentenced to the penitentiary. You are not to consider whether they will be or not. The court, however, in view of such argument, will tell you that the court is not required to compel either of the defendants, in the event they are found guilty, to serve any time whatsoever in any penitentiary; although the court can impose such a sentence if the court deems proper, in the light of the information it would have at the time of sentence, in addition to what information it might have now; or the court could impose a county jail sentence or merely a fine. But whether the court would give the defendants a substantial sentence or one not substantial is for the conscience and the judgment of the court alone.

There are two kinds of evidence,—the direct and circumstantial. Direct evidence is that which a person observes or sees or which is susceptible of demonstration by the senses. And circumstantial evidence is proof of such facts and circumstances concerning the conduct of the parties which concludes

or leads to a certain inevitable conclusion. Circumstantial evidence is legal and competent as a means of proving guilt in a criminal case. [160]

As a matter of fact, in conspiracy cases it would be impossible to convict in many instances unless circumstantial evidence could be introduced and relied upon by the jury. But the circumstances must be consistent with each other, consistent with the guilt of the parties charged, and inconsistent with their innocence and inconsistent with every other reasonable hypothesis except that of guilt. When circumstantial evidence is of that character, circumstantial evidence *along* without any direct evidence whatever is sufficient to convict.

Likewise, if a combination of direct and circumstantial evidence is of the character I have just mentioned where it convinces the jury beyond a reasonable doubt, that is also sufficient for conviction. You should decide the case wholly upon the testimony and evidence introduced at the trial, and under these instructions of the court.

No person, regardless of ancestry, should be convicted unless the evidence establishes his guilt beyond a reasonable doubt as such reasonable doubt has already been defined to you. But no person, regardless of ancestry, is privileged to violate the law.

In this case as in all cases, regardless of the charge, you are only permitted to render a verdict of guilty if the evidence so convinces you beyond a reasonable doubt. Prejudice can not be substituted for evidence. But if you are convinced of

the guilt of the defendants or either of them beyond a reasonable doubt by the evidence, then it is your duty to convict and [161] you have no right whatsoever to vote for acquittal for the purpose of proving to someone that you are not prejudiced. In other words, if you are convinced beyond a reasonable doubt from the evidence and the reasonable inferences therefrom that the defendants are guilty, it would be a violation of your oath to lean backwards and vote not guilty.

It is psychologically impossible for you to enter into the minds of the defendants and determine the intent with which they operated. You must, therefore, determine the motives, purposes and intents from the testimony, including the exhibits which are in evidence and you will consider all of the circumstances disclosed by the evidence and the witnesses, bearing in mind that the law presumes that every man intends the legitimate consequences of his own acts.

The first count of the indictment charges Charles T. Takahashi and Edward Y. Osawa with having entered into a conspiracy with one, M. Ikuta, Kono alias Willie Chang, and M. H. Kiang. In brief, it is charged that the defendants, Takahashi, Osawa, Kono alias Chang, and Kiang, within one year prior to the second day of November, 1941, and continuing to and including November 2, 1941, at Seattle, Washington, at Washington, D. C., at Tokyo, Japan, at Shanghai, China, and other places to the grand jurors unknown, did then and there knowingly, wilfully, unlawfully and feloniously combine and conspire, confederate and agree to-

gether and with each other and with other persons, to the grand jurors unknown, to violate that certain paragraph of the [162] executive order effective April 15, 1941, providing as follows: "6. The country designated on the application for license as the country of destination shall in each case be the country of ultimate destination. If the goods to be exported are consigned to one country, with the knowledge that they are intended for transshipment thence to another country, the latter country shall be named as the country of destination." Which executive order was authorized by an Act of Congress.

And also that they did further conspire to violate the provisions of Section 80 of Title 50 of the United States Code, it being charged that it was the purpose of said conspiracy and the intention of the said persons so conspiring together to knowingly, willingly, unlawfully and feloniously export three steel, dismantled, storage tanks by causing China to be designated on an application for license, for the export of such three tanks, as the country of destination when, in fact, the country of ultimate destination was Japan, as they, and each of them, well knew.

It is also charged in the first count that it was the object of the conspiracy and the object of the persons so conspiring together to violate Section 80, Title 18 of the U. S. Code, they knowingly and wilfully, to make and cause to be made fraudulent explanations in an attempt to export the said three tanks.

Count one further charges that the defendants, including the two now on trial and the three others who have not been arrested, with having committed certain overt acts; that is, affirmative acts in furtherance of [163] the conspiracy. It is not necessary for the government to prove all of the 20 or 22 overt acts set forth in the indictment. It is sufficient if only some of them be proved. Actually, only one of the 22 need be proved. But at least one of the overt acts must be proved to have occurred in Seattle, Washington, after April 15, 1940, and before the defendants left the dock on November 2, 1941.

If one overt act is proved to have been done in Seattle after April 15, 1940, that is sufficient as far as the proof of the overt acts is concerned. There may be proof of more than one but it is not required that the others be shown to have been committed at Seattle. But any of them may be proved to have been committed at Seattle.

Count 2 of the indictment charges that the defendants Takahashi and Osawa, Ikuta, Kono alias Chang and M. H. Kiang, the last three not being on trial, on or about the 16th day of July, 1941, at Seattle, Washington, knowingly, wilfully, unlawfully and feloniously violated the provisions of the executive order I have already mentioned, in that it is charged that the defendants in an application dated July 16, 1941, for a license to export the same three steel storage tanks, did designate China as the country of ultimate destination instead of Japan, the true destination.

As a matter of law, steel storage tanks are included in the export control schedule number one, duly issued March 15, 1941, to take effect on April 15, 1941, making it a requirement specifically to obtain a license to [164] export such articles. Ultimate destination means the last or final destination.

Count 3 of the indictment charges that the two defendants on trial, and the same three other persons, on or about the 16th day of July, 1941, at Seattle, did knowingly, wilfully, unlawfully and feloniously make and cause to be made false and fraudulent statements and representations in an application for a license to export the same three steel storage tanks; it being charged that the false and fraudulent statements consisted of statements that China was the country of ultimate destination.

This count 3 is brought pursuant to the statute which says that it is a violation for anyone to make or cause to be made any false or fraudulent statement or representation in any manner within the jurisdiction of any department or agency of the United States. Wilfully means intentionally. The word false means knowingly untrue or knowingly incorrect. Fraudulent means untrue and made with a design to influence action by another who relies thereon.

In this case it is not necessary for the government, with respect to count 3, to prove that the statements in the application were both false and fraudulent; either is sufficient. Although the court charges that they were false and fraudulent, under

the law all that is necessary is that the evidence prove that they were false or fraudulent.

You are instructed that a crime may consist of many parts but each person consenting to the commission [165] of the offense and doing some part in connection therewith which is either an ingredient of the crime or immediately connected with or leading to its commission is as much a principal as if he had with his own hand committed the whole offense.

And if in law one aids, counsels, procures or assists another to do an act in violation of law, even if the one so aiding, counseling, advising, procuring, inducing or assisting in its commission is far away, or even across the ocean, and regardless of whether the one who actually does the act knows that he is violating the law, the one so aiding, counseling or assisting in the commission of the crime, no matter how far distant, is guilty as a principal and is held to be constructively present where the crime was committed.

A conspiracy may be defined as a combination or partnership or understanding between two or more persons to do an unlawful act or acts or to do a lawful act or acts by unlawful means; and the doing of some act or acts by some one or more of them for the purpose of carrying the conspiracy into effect.

It is not necessary for all of those who conspire to do any act at all. If two or more conspire and one does some affirmative act to further the conspiracy, then all of them are liable; the partnership is liable.

It is not necessary that the act or acts done should actually accomplish the purpose of the conspiracy. It is only necessary that such acts be done for the purpose of carrying the conspiracy into effect, regardless of whether the conspiracy is actually finally [166] accomplished or not. In other words, the fact that none of the three tanks were shipped out of the United States does not defeat the charge. In considering your verdict as to the defendants, Charles T. Takahashi and Edward Y. Osawa, with respect to count one you will first consider whether or not a combination or understanding to do the unlawful acts existed at any time as charged in the indictment; that is, existed at any time after April 15, 1941 and up to November 2, 1941. And if you find from the evidence beyond a reasonable doubt that such a combination or understanding or partnership did exist, even if only for a few days, or if only for one day, you will then consider whether the defendants Takahashi and Osawa, or either, at any time during the life of such conspiracy became parties to the understanding which could be either a written or oral understanding or agreement or even merely an implied or tacit understanding.

If you find from the evidence beyond a reasonable doubt that such a conspiracy was entered into by two or more persons and that some one or more of the persons to the conspiracy did some one or more of the overt acts charged in the indictment, one of which must be at Seattle, after April 15, 1941, as I previously stated, for the purpose of aiding or assisting in the forwarding of the con-

spiracy and that any such act was done not later than November 2, 1941, before the defendants left the dock, then each of the defendants who entered into such conspiracy, or who became a party to it at any time after its formation, at any time before the [167] doing of the last overt act, whether or not he actually did anything other than join the conspiracy, would be just as guilty as the one who planned the conspiracy or who performed the overt acts. It is not necessary that the government establish the exact time of the formation of the conspiracy. If the conspiracy existed, it ended November 2, 1941, upon the search of the defendants on trial at the dock. Mere relationship between the parties, so they could perform certain acts which may tend to a general plan, is alone not sufficient. There must, in addition to any such relationship also be knowledge and conscious participation in an unlawful enterprise. If there were such, then it is immaterial what the party did, how little the service was that they performed, what profit, if any, they were to receive. It is immaterial whether or not they received or were to receive any profit at all.

And where two or more persons are proved to have joined together for the same illegal purpose, any act done by one of the parties, any statement made by one of the parties, any communication by word of mouth, by telephone, by telegraph, by letter, in furtherance of the original, concerted plan and with reference to the common object during the existence of the conspiracy,—in this case not later than November 2, 1941 as aforesaid,—is

in the contemplation of law the act and word of each of them.

There is no need at all to the parties of the conspiracy knowing what each of the others did or what each of the others was to do. Any act or communication [168] or declaration made or said by any member of the conspiracy in furtherance thereof is competent proof against any other member during the time the other member is a party.

If they are one of the partners in the conspiracy during the life thereof, each partner who is a party in the conspiracy acts for every one and all act for each.

It is charged in the conspiracy count of the indictment that the defendants conspired to violate two different statutes of the United States. It is not necessary that the evidence prove a conspiracy to violate both of the statutes. It is sufficient if a conspiracy be proved by the evidence beyond a reasonable doubt to violate either one or both of the statutes as charged in the indictment; and that one or more affirmative acts was done as I have stated above for the purpose of furthering such conspiracy.

Any overt acts which happened before April 15, 1941, shall only be considered as history for the purpose of aiding the jury in understanding the relation of the parties and what knowledge they had after April 15, 1941.

It is not necessary at all that either of these two defendants were members of the conspiracy at the inception. It is not necessary that these two

joined at the same time. If there was a conspiracy, as charged in count one of the indictment, and if thereafter the two defendants on trial or either of them at any time before November 2, 1941, joined the conspiracy, knowing of its unlawful purpose, the defendants or such one who so joined would become liable for the acts of [169] each of the conspirators during the period of their participation, whether he knew of such specific acts or not. In other words, that is the risk of one who joins a criminal partnership.

It is not necessary that it be proved that the defendants agreed either orally or in writing to commit the crime charged. It is sufficient if the evidence shows that there was a conscious participation knowingly in a criminal conspiracy as charged in the indictment.

If, for instance, M. Ikuta and Mr. Kono of Japan had a plan to violate these laws and executive order of the United States, to get these three tanks into Japan by way of China or under the pretense that they were going to China. And if days or weeks or months after they so decided it is proved beyond a reasonable doubt that the defendants or either of them finally learned of such unlawful design, and participated even to a small degree in furtherance of such design, such defendant would be guilty.

It is not necessary at all that the evidence prove that this conspiracy was started at any time in 1940. If the evidence convinces you beyond a reasonable doubt that it was formed on the 27th day of June,

1941, when the telegram was sent by Miconi Shoko Company to Mr. Takahashi, that would be sufficient, providing that the evidence shows that the defendants joined it or one of them joined it sometime, knowing of its unlawful design, before the doing of at least the last affirmative act, which would need to be committed in Seattle.

If you are convinced by the evidence beyond a [170] reasonable doubt that the defendant, Edward Y. Osawa, aided in or counseled or advised or procured or induced or assisted in the commission of the crimes charged in counts 1, 2 and 3 or any of them, then in law the said defendant Osawa would have been held to have been constructively present where the crime was committed even though in body he was thousands of miles away.

It is not necessary that you be convinced by the evidence beyond a reasonable doubt from evidence produced by government witnesses. It is only necessary that the evidence produced at the trial, regardless of when it was introduced or who so introduced it, so convinces you.

The indictments in each of the counts are long and technical. To a large degree they are directed to the court. And the Court instructs you that each such indictment and each of the three counts is legally sufficient, regardless of anything that may have been told to you in argument in this case.

You are the sole and exclusive judges of the weight and credibility to be allowed the testimony of the witnesses, both for the government and for the defendants. In weighing the testimony of the

various witnesses it is your duty to determine *who* testimony is most worthy of belief from the appearance and demeanor of the witnesses, their manner of testifying, their apparent frankness or lack of frankness, their bias or prejudice if any is shown, their apparent intelligence or lack of it, their interest in the result of the case if any, the reasonableness or [171] unreasonableness of their testimony, and to give credit accordingly.

You are further instructed that if you believe that any witness, who has testified in this case, has knowingly sworn falsely as to any matter or circumstance material to the issues in this case, then you are at liberty to disregard the entire testimony of such witness except in so far as it is corroborated by the testimony of another deemed by you worthy of belief or by the facts and circumstances proven on the trial.

Those rules apply to each of the defendants on trial as well as to each and every other person who has testified as a witness. When a defendant testifies in his own behalf, you may consider what interest he has in the outcome of the case, and whether that interest has been sufficient to lead him to deny things that really are true or to testify to things that are not true. You will weigh the testimony of each defendant in the same manner you would weigh the testimony of anyone else, considering his position.

You are required to take the law from the court as a matter of duty, under your oath as jurors. But as to the facts, what the evidence proves, what

weight you are to give the testimony of the various witnesses, and what inferences you should draw from the facts and circumstances proved, such are exclusively your function. And in respect to that you are independent and controlled neither by any opinion of the court or by the arguments of counsel.

No opinion that the court may have nor that you may [172] think the court may have as to the guilt or innocence of the defendants or the credibility to be accorded the testimony of any witnesses or as to the inferences to be drawn from any circumstances proven is controlling or binding upon you. It is for you to determine the facts in this case. The responsibility as to the verdict as to each defendant as to each of the three counts is upon you.

That responsibility remains with you. It is a duty which you can perform only by honest determination and by your best judgment, reached after deliberating among yourselves, from a common sense standpoint and a reasonable viewpoint taken by you all.

When you retire to the jury room to deliberate upon your verdict, you will first select one of your number as foreman. And when all of you have agreed upon your verdict as to each of the defendants as to each of the three counts, your foreman will sign such verdict and you will then return with such verdict into court.

You will take to the jury room the indictment, the form of verdict and the exhibits which have been introduced in evidence. In the verdict you will find blanks as to each defendant as to each count. I will read a portion of the verdict to you.

“We the jury in the above entitled cause find the defendant Charles T. Takahashi blank guilty, as to count one of the indictment filed herein.” Before “guilty” you will fill in the word “is” or the word “not” in the blank, as the case may be. You will do the same as to counts 2 and 3.

And then the verdict goes on to read, “and we [173] further find the defendant Edward Y. Osawa blank guilty as charged in indictment one herein.” And as to each count, with respect to Edward Y. Osawa, you will likewise fill in the word “is” or the word “not” as you find him guilty or not guilty as to each such count.

Summarizing the indictment, count two thereof charges that the defendants violated the executive order issued pursuant to congressional act. Count three thereof charges that the defendants violated an entirely different act which prohibits any false or fraudulent statement in any application. While count one charges that the defendants conspired together with the plan and purpose of violating such executive order and such law named in counts two and three; and that in attempting to make their conspiracy successful they did certain overt,—that is, affirmative acts. That is, counts two and three charge actual violations of an executive order and an independent law respectively, while count one charges an unlawful association with the intention of violating the same.

The fact that you may think that less counts than three would have been sufficient is no excuse

whatsoever for you not finding each defendant guilty as to all three counts, if you are convinced beyond a reasonable doubt that they are guilty.

You are further advised that if you find the defendants or either of them guilty of either count two or three that necessarily you must find them guilty of the other of counts two and three because if a defendant is guilty of one of those two counts of necessity he [174] is guilty of the other of said two counts.

And you are further advised that if you are convinced by the evidence beyond a reasonable doubt that the defendants or either of them are guilty of either counts two or three, and violated the law in respect to said counts or either of them, with the purpose of assisting someone in Japan in furtherance of the conspiracy charged, then you must of necessity find them not only guilty of counts two and three, but also of count one.

Upon the other hand, if you come to the conclusion that any defendant did not know of the illegal purpose charged in the indictment in count one until after the 16th of July, 1941, but that sometime thereafter such defendant did learn of the unlawful purpose and then cooperated in furthering such purpose and that thereafter and by November 2, 1941, some overt act was done, then you can find such defendant or defendants guilty as to count one, although that particular defendant might not be guilty as to counts two and three.

In federal court, unlike the superior court, the judge is entitled to comment on the evidence. He

is entitled to express his opinion to the jury of whether or not he believes certain witnesses; and in some cases even to tell the jury what his verdict would be if he were on the jury. I am not going to tell you what my verdict would be if I were on this jury. That is your responsibility. But if I did tell you, or what I may say as to the evidence does not bind or control you at all. It would be your privilege to differ absolutely [175] from me or to agree with me if you independently so decided.

Any comment I may make is not for the purpose of binding or controlling you but is for the purpose of aiding you in understanding the instructions, and in illustrating the application of the instructions.

If I happen to mention any particular individual or any particular exhibit or part thereof or evidence, I wish you to know that you are to consider all of the evidence, all of the testimony, of all of the witnesses, and all of the exhibits, and every part of every exhibit whether I mention it or not, and that you are to return your verdict after thorough consideration of all of the evidence.

If at any time I may give a statement as to my recollection as to what any evidence is, if my recollection of the evidence differs from your recollection, you are to follow your recollection, just the same as you are to follow your recollection as against the statement of any counsel. You are the judges of the facts.

In considering all of the evidence in the case it is not sufficient for you to find merely that the evidence was consistent with the theory of the defend-

ants guilt. Before you may find the defendants or either of them guilty, you must be convinced beyond a reasonable doubt that the evidence is inconsistent with their innocence and inconsistent with every reasonable hypothesis except that of guilt.

You are not bound or controlled at all by any bold [176] statement any witness may make. And you are not bound or controlled at all by any bold statement any defendant may have made.

You have a right to consider every statement made by every witness in the light of evidence and in the light of the reasonable inference which you, in the exercise of your common sense, reasonably draw from the circumstantial and other evidence in the case. And if any witness, whether defendant or not, makes any statement which you find to be unreasonable in the light of the testimony and in the light of the reasonable inferences to be drawn from the testimony, then you may disregard such statements, even though there is no other witness who is able to testify to the contrary.

In this case it is my recollection that Mr. Osawa testified that while he was in Tokio, Japan, exhibit 9,—which he says he brought with him from Tokio, Japan, to Seattle on November 2nd—was handed to him by someone, from Mikuni-Shoko Company Limited of Tokio, Japan. He says that he received that letter, as I remember it. That letter recites from the beginning, quote,—it is addressed to “Messrs. China Import and Export Company. As a consequence of our long business discussion with your representative, Mr. W. L. Chang,

we wish——.” Now, in the light of all of the evidence of this case, if you believe that Mr. Osawa honestly believed that Mr. W. L. Chang was the business representative of the China Import and Export Company; in the light of all of the evidence that you have heard, do you believe that Mr. Osawa believed the statement in [177] the last of that letter that the tanks were imported for local storage purposes in Shanghai?

In connection with that letter and in connection with all of the evidence in the case, if Mr. Osawa believed that the letter of July 4, 1941, signed by Hua Hsin Company was an honest order for the shipment of these tanks to Shanghai, do you reasonably think that he would have written on July 15 to Mr. Takahashi to this effect: “We sure are on a spot on the three tanks. I doubt if a day goes by that they don’t call us or say something about them. If we could only get those three tanks out it would be a life saver and they would do almost anything for us.”

And you are entitled in the light of your experience and your common sense to determine if Mr. Osawa honestly believed that the Hua Hsin Company was purchasing these tanks, if he wouldn’t have made a statement in this communication to Mr. Takahashi to the effect that he was not willing to approve the credit account of \$71,700 claimed in the Hua Hsin Company.

And you have a right in the light of all of the testimony to determine whether or not Mr. Osawa

thought any portion of that letter of July 14, 1941, was an honest letter.

As I remember the testimony, Mr. Osawa testified that while this plaintiff's exhibit 9 was brought to him by someone from the Miconi Shoko Company, that he never saw either of the letters—I would like to find exhibit 17—dated July 16, 1941, addressed by Miconi Shoko Company Limited of Tokio, Japan, also to Seattle, [178] Washington, but to the name Takahashi, instead of Chinese Import Company.

In the light of all of the evidence that you have heard in this case and of the exhibits, do you believe that if the Mikuni-Shoko Company would take to Mr. Osawa this exhibit 9, instead of mailing it to the China Import Company at Seattle, that they wouldn't also take to Mr. Osawa exhibits 17 and 18? If you read exhibits 17 and 18, as I know you will, it will be for you to determine whether or not those two letters do not show that it was the plan of the Mikuni-Shoko Company Limited or of Mr. Ikuta, its director, to merely use the Hua Hsin Company as a pretense.

It will be for you to determine if the Mikuni-Shoko Company wished Mr. Osawa to have the one letter, why they wouldn't want him to have the other two letters.

It is also for you to consider in the evidence—I would like to see the telegraph exhibits 10 to 13, inclusive—it is also for you to consider, in the light of all of the evidence, whether a business man of the experience of Mr. Takahashi, receiving these

telegrams, under date of June 27th in code duo and private, under date of June 28th in code duo, and under date of July 5th under code duo, code inverted, and under date of July 8, 1941, under code duo, without realizing what the purpose of Mikuni-Shoko Company was, as you find from the evidence in the light of exhibits 17 and 18.

Do you think it is reasonable that if a man with the experience of Mr. Takahashi, under date of June 27th, [179] received a telegram from a company in Tokio, which included this language, "Do utmost to arrange earliest possible shipment by every possible means oil tanks and tubes. Our customers desire additional oil tanks. Telegraph prospect." And if on or about the next date, by a telegram from the same Tokio Company, dated June 28, 1941, he was advised as follows: "Decided today name of firm is Hua Hsin Company, address 320 Road, Shanghai, China." whether or not he would think that that was an honest sale to the Hua Hsin Company in Shanghai, China, or whether those telegrams would give any possible inference except that Mr. Takahashi was advised that the Mikuni-Shoko Company was telling him that they had decided to use the name of Hua Hsin Company?

In the light of your experience do you think that if this was an honest sale that the Mikuni-Shoko Company would not have used the words, "Tanks have been sold to the Hua Hsin Company" instead of telegraphing Mr. Takahashi, "Decided today

name of firm is Hua Hsin Company” and the other language set forth in this telegram?

My recollection of the evidence in this case is that Mr. Takahashi admitted that he had these four telegrams before he handed Mr. Leo Nye Sing the application of July 16, 1941. From the light of your experience and from the light of what Mr. Leo Nye Sing did in connection with this transaction with Hua Hsin Company, do you think that if Mr. Takahashi had deemed that that transaction was honest, that he would have [180] agreed to pay three percent or any percent for someone to sign his name?

It is for you to determine in the light of your experience whether, if Mr. Takahashi was endeavoring to sell these three tanks other than in the Orient at times when he understood he would be unable to ship them to the Orient, if that were any different than anyone would do; whether they were honest or dishonest, if they were not able to have tanks shipped to the Orient, when they had been ordered from that location.

Under the evidence, as I remember it, the Mexico transaction, as far as the contract is concerned, involved used plats, used steel plates.

Under the evidence, as I remember it, the Mexico company executed an affidavit before a Mexican notary public and someone as a vice consul signed a certificate to the effect that such Mexican notary public was a notary public. It is for you to determine in the light of all of the evidence whether actually that affidavit was true.

That evidence has been introduced by the defendants upon the ground that it shows such good faith on the part of the defendants that they wouldn't be willing to violate any other law in the light of their action in that connection. You have a right in connection with the Mexican transaction to read and consider what Mr. Takahashi wrote as to the Mexican situation.

It is also for you to determine whether or not the Mexican transaction shows such good faith that anyone acting as Mr. Takahashi did would not violate any other [181] law or whether it shows, or whether you may reasonably infer that it shows that when the blacklisted firm was unable to receive any more steel plates, for whatever purpose it wished to receive them, that Mr. Takahashi cancelled the contract after it had been suspended by the Mexico company.

The jury may be advised that the Court sees nothing against the defendants or either of them in the act that Mr. Osawa used some other method than a passport to go to Japan. It was perfectly legal and indicates in no wise any guilty knowledge or any guilty purpose.

The jury has already been advised and will be advised again that there is no unlawful act charged against any defendant which is supported by the evidence prior to April 15, 1941, and anything that the defendants or either of them may have done before that time, as far as this charge is concerned, is to be considered as history for the purpose of helping you know what the defendants knew or

should have known when they saw such communications as they did see and received such telegrams as they did receive.

You are entitled to view all of the evidence and to draw all of the reasonable inferences which you as men and women would, in your common sense, draw if you were making an honest investigation to determine what actually happened in this case.

It is for you to determine, in the light of the use of fast messages of communication, of cable, long distance telephone, airplane, whether or not—with ships carrying mail as infrequently as has been testified [182] in this case they did, in 1940 from Japan—as to whether or not it is reasonably likely that with the amounts involved and the business being transacted there, the slow method and infrequent method of ships was used or whether the fastest method for carrying mails as shown by the evidence was utilized.

In testing the evidence of the case, you have a right and should consider all of the statements and all of the exhibits 19, and 21 and 29, relative to these tanks. You have a right to determine whether the defendant Takahashi or the defendant Osawa was honest in stating the specific purpose of the article and the address of the ultimate consumer in a foreign country.

In the light of all of the evidence, do you believe that in exhibit 21, the application of July 16, 1941, that Mr. Takahashi believed that the specific purpose and the address of the ultimate consumer

for storage purposes was Hue Hsin Company, Shanghai, China?

With respect to exhibit 19, the application of April 16, 1941, it is for you to determine whether or not it was honestly believed by Mr. Takahashi the purpose of the articles and the name of the ultimate consumer for storage purposes by Miconi Shoko Company. In that connection you may consider that in exhibit 20 signed by Mr. Leo Nye Sing it was stated that the consignee was Koman Company, Mukden, China. And that the purpose was to be used on horse-drawn cooley wagons and carts, \$25,000, 50,000 pieces of automobile roller bearings. The Kono and Company was the "ultimate consumer to be sold to the trade as above explained." In [183] the light of that statement that those articles were to be sold to the trade as above explained, it is for you to determine whether or not the defendant Takahashi was frank and open with the government in not stating, instead of the purpose of the ultimate consumer being storage purposes by Miconi Shiko Company,—for sale by Miconi Shoko Company to the Japanese Army or Navy.

As I have advised you, any statements that I call to your attention are to be tested by you under the understanding that you are the final and supreme judges of the facts. You are obligated to follow my instructions as to the law. You are to draw those reasonable inferences as you honestly feel are the reasonable inferences to be drawn from the evidence and from each of the exhibits.

You are instructed that it is not necessary for the government to prove that all of the business carried on by the defendants was contrary to the United States law or that any other business than the particular business of the three tanks was contrary to the law.

There has been evidence introduced in this case as to the good reputation,—that is, what people say as to the honesty or integrity of the defendants,—and you shall give such testimony that weight as you believe it entitled to receive in determining whether or not the defendants are guilty as charged. But the jury will recognize that many men have *born* good reputations, sometimes over many years, and have later been convicted of an offense which has existed for the same many years during which everyone thought they had a good reputation. [18!] And in this case, if you are convinced beyond a reasonable doubt that the defendants or either of them, by the evidence, are guilty of the three counts or any of them, it is your duty and obligation to find said defendants or such one guilty, regardless of how good their reputation may have been.

While the indictment is to be taken by you, that is for the purpose of letting you better understand the evidence and the instructions. And you are to follow the law as given to you by the Court, touching the indictment. The indictment is not evidence; it is just the method of placing the defendants on trial.

You may now retire temporarily. There must be

no discussion or expression of opinion by any of you.

(Jury retires temporarily.)

Thereupon Mr. Griffin excepted to certain charges of the Court, among others the following:

The Court then advised the jury, in effect, that he was permitted to comment upon the evidence, and the Court did comment upon the evidence, but the comment of the Court, to which the defendant Osawa excepts, was not unbiased, was not fair, was not met by the Court with any favorable comment of any kind in behalf of the defendant Osawa, but the comment was unfair, biased, prejudicial, without any endeavor at all to equalize the force of the comment, but made directly and with emphasis for the purpose of advising the jury that the Court, irrespective of what the Court said in the general instruction, that they should take nothing from it, to advise the jury that the Court desired a verdict of guilty in this case. Considering the comment made by the Court upon the evidence, an exception is taken to each and every comment made by the Court in that [185] particular. I desire to point out that having so commented, the defendants were entitled to have an equal fair comment in so far as their rights were concerned, to suggest to the Court this: While the Court by its comment has sought a conviction, because the defendants are charged with desiring to transship three tanks, from Shanghai, China, to Japan, the jury were entitled to be told that they also should consider this—there

is no evidence in the case that Japan required these three tanks in Japan. The evidence is that at the time in question Japan controlled not only the port of Shanghai but all the ports of China. The evidence is with that situation existing, the United States government denied the application, that the jury has an absolute right to infer, even if the shipments were direct to the Japanese Army, that those storage tanks might be and would be as useful in Shanghai, China, where its armies were employed, as it would be to ship them to Japan and transport oil from Japan, 1500 miles to Shanghai.

Also, the Court went further and, by his instructions, wiped out all of the law of good reputation and honor, so far as the defendants are concerned, by his instruction that the jury could consider the reputation for what it is worth, but—as the jury knows, said the Court—people with good reputations are guilty and in this case so and so and so and so.

The Court: It is understood and the Court rules that each exception taken by Mr. Griffin on behalf of Mr. Osawa shall be deemed taken by Mr. Bassett in behalf of Mr. Takahashi.

Mr. Bassett: Thank you. In addition to what counsel has said in taking an exception to the Court's commenting on the evidence, I wish to add that the comments were not only biased and prejudicial and unfair, and one-sided, but they were argumentative as well. [186]

The Court: I imagine that you would like all of the exceptions which Mr. Bassett has taken?

Mr. Griffin: Yes. I was just going to suggest that would round it out, then.

The Court: You may.

The Court: I am going to give some additional instructions, in the light of the exceptions you have taken, and if you wish, it may be understood you will have the right of exception to each one without the necessity of expressly taking them. Is that satisfactory?

Mr. Griffin: Yes.

Mr. Crandell: Yes.

Mr. Bassett: Yes.

(Whereupon the jury returned to the courtroom and was seated in the jury box.)

The Court: Members of the jury, supplementing the instructions on the law, that you must accept as the law, I wish to say this to you: In addition to what I have said with respect to the testimony in the case regarding the reputation of the defendants or either of them, the jury are instructed that if, in the light of all of the testimony and in the light of the reputation testimony, they believe the defendants or either of them are not guilty, they have a right to base that verdict upon their interpretation of the testimony, together with reputation testimony, if in the jury's opinion such satisfies them that the defendants are not guilty.

The jury are further instructed that they cannot find a defendant in any criminal action guilty upon mere suspicion, conjecture or surmise. The jury, however, is instructed that a reasonable inference from circumstantial evidence or a reason- [187] able

inference from direct evidence or a reasonable inference from circumstantial and direct evidence is not and are not mere suspicion, conjecture or surmise or mere suspicions, conjectures or surmises.

The jury does have a right to bring in a verdict of guilty if convinced by the evidence, including the reasonable inferences which the jury draws from some evidence of the guilt of the defendants beyond all reasonable doubt.

Would you read that to me, Mr. Reporter.

(Whereupon the passage referred to was read by the reporter.)

The Court: But if not convinced by the evidence and the reasonable inferences of the evidence beyond all reasonable doubt of the guilt of the defendants, the jury cannot convict the defendants or either of them upon suspicion, conjecture or surmise or prejudice.

With respect to certain comment I made on certain evidence, I wish to remind you again that you are not bound or controlled by any comment at all I make on the facts. You have the right absolutely and entirely to disregard whatever I say. But with respect to Exhibit 20 the Court wishes the jury to understand that there is no inference to be drawn against the defendants or either of them upon the ground that bearings were improper to be sent to Mukden. It was the Court's intention to have the jury consider whether or not, in the light of Exhibit 20, having recited that the consignee had such bearings for ultimate sale to the trade, if the defendants should not have advised the Government

in applications relative to the three tanks that Miconi Shoko Company was to sell said tanks or furnish them to the army or navy as the evidence may convince you was the actual fact. [188]

The jury has heard the evidence on the argument and instructions of the Court. When the jury retires, to consider their verdict, it will be the responsibility of the jury, under their oath and their conscience.

The bailiffs may be sworn.

(Whereupon the bailiffs were sworn.)

The Court: When the jury unanimously agrees upon each of the three verdicts as to each of the three defendants and the entries have been made, as I have already directed, the foreman will sign and date the verdict.

Ladies and gentlemen, the decision is now for you. You may retire.

(Whereupon the jury left the jury box and the courtroom.)

The Court: Do you wish to note any exceptions—though I have in mind what has been said—do you wish to except to each and every thing that I have said to the jury at this time?

Mr. Griffin: I so understood.

Mr. Bassett: Yes.

Mr. Crandell: Yes.

(The jury retires to consider of its verdict.) [189]

CERTIFICATE

State of Washington,
County of King—ss.

I, Lloyd L. Black, Judge of the District Court of the United States for the Western District of Washington, Northern Division, and Judge before whom the foregoing cause, entitled “United States of America, Plaintiff, v. Charles T. Takahashi, Edward Y. Osawa, et al, Defendants”, was heard and tried, do hereby certify that the matters and proceedings embodied in the foregoing Bill of Exceptions are matters and proceedings occurring in the said cause, and that the same are hereby made a part of the record herein; and I further certify that the said Bill of Exceptions together with all the exhibits and other written evidence on file with the amendments ordered in the said cause and attached to said Bill of Exceptions contains all the material facts, matters, things, proceedings, rulings and exceptions thereto, occurring in said cause and not heretofore a part of the record herein, including all the evidence adduced at the trial of said cause; and I further certify that the exhibits set forth or referred to, or both, in the foregoing Bill of Exceptions constitute all of the exhibits offered in evidence at the said trial, and I hereby make all of said exhibits a part of the foregoing Bill of Exceptions; and I hereby settle and allow the foregoing Bill of Exceptions as a full, true and correct Bill of Exceptions in this cause and order the same filed as part of the record herein, and further order the Clerk of this Court to attach to the said Bill

of Exceptions all of the said exhibits and to transmit said entire Bill of Exceptions, including all exhibits whatsoever to the Circuit Court of Appeals for the Ninth Circuit. I further certify that the minute entry of the Clerk, transmitted with the record, contains all orders made by me fixing and extending the time for the presentation, settling [190] and filing of the Bill of Exceptions, and that the foregoing Bill of Exceptions is presented, settled and allowed within the time prescribed for that purpose.

Dated this 7th day of Sept., 1943.

LLOYD L. BLACK,

United States District Judge for the Western District of Washington, Northern Division.

The foregoing certificate is true, and is approved.

TRACY GRIFFIN,

SAMUEL B. BASSETT,

Attorneys for Appellants.

Received copy of the within Bill of Exceptions this day of August, 1943.

.....
U. S. Attorney.

Attorney for Appellee.
.....

.....
Attorneys for Appellants.

[191]

[Title of District Court and Cause.]

PROPOSED AMENDMENTS TO BILL OF
EXCEPTIONS

Comes now the plaintiff in the above entitled cause and moves that the following amendments be added to the Bill of Exceptions:

I.

That to the cross examination of Osawa the following be added:

Referring to Exhibit No. 17, the first time I saw that letter was just prior to the previous trial. I never saw it in Japan.

Q. Did you ever talk with Mikuni-Shoki Company at all in regard to that letter while you were in Japan, or the details connected therewith?

A. Not in particular to this letter.

Q. But the facts mentioned in the letter, you did talk of them didn't you?

A. The only thing in this letter that I talked over with them was that they have arranged these two companies listed here.

Q. Well, you talked to them about "three new tanks, 80's, and accessories which we ordered from you last year", you talked that over with them, didn't you?

A. The only information I gave on that was that I told them why not offer these tanks which we have as a starter for our connection with Shoki.

Q. The military authorities were hounding you every day, were they not, to get these three tanks?

A. They were not hounding me, but they were hounding Mikuni.

Q. Were you there?

A. I was not with Mikuni when they were hounding him.

Q. Well, they were hounding you weren't they every day?

A. No, the military authorities were asking Mikuni about these tanks, when they were coming, why can't they get them through, etc., and Mikuni, in turn, would relate that information to me.

I wrote that we were on the spot on these tanks, and it is a fact that we were. The military authorities were asking Mikuni all of the time, and they were relaying that information to us.

Q. The Tonway Trading Company and the Hua Hsin Company are the same companies mentioned in my letter to Takahashi.

I never saw plaintiff's Exhibit No. 18 prior to the last trial. I talked with them about the tanks. They asked me if I could get them an R.C.A. Receiver. I told them to get in touch with the Seattle office. They told me afterwards that they sent a cable and that a cable came back from Takahashi. I presume the dates were July 2nd, July 10th and July 15th, or thereabouts. (R. 436-439).

II.

That all of the Exhibits in the case or copies thereof be attached to the Bill of Exceptions prior to the Bill being certified.

III.

That there be added to the Bill of Exceptions the following:

That when the motion was first argued, counsel for defendants, Takahashi and Osawa, urged to the Court that Mr. Takahashi had a right to be in the enclosure because he had gone upon the vessel with a permit and had left the vessel with certain custom officials, which constituted an implied consent.

Later, and before final decision, the Court in the presence of the defendants indicated in his ruling that when Mr. Takahashi left this vessel from Japan on which Mr. Osawa had come, going in the Customs enclosure where the public had no right to be, that he put himself in the position of a passenger, and was subject to the same search as the authorities had a right to make of Osawa; the point the Court was stressing being namely, if the authorities could search Mr. Osawa, and could not search Takahashi, then that anyone who wanted to bring something they had no right to have from Japan, could have an accommodating friend go on the boat and give them the things they wished kept secret, and thereby effect the stalemate of the officers.

The next day, despite the fact that Mr. Takahashi had sat there complacently while counsel made the argument of his having been on the boat, the Court was presented with another affidavit in reference to the first one, solemnly swearing Mr. Takahashi never had been on the boat at all, and had never left it.

The Court was, repeatedly, informed by counsel, even as late as the motion for a new trial, that Mr. Takahashi had a written permit to go into the enclosure. The only permit was Exhibit No. I, presented to the Court on May 4th at this preliminary hearing, bearing Mr. Takahashi's picture, bearing his signature and reading as follows:

“United States Customs Service, Office of the Collector, Port of Seattle, July 1, 1940.

Admit within the Customs Lines of incoming vessels at the Port of Puget Sound, Mr. C. T. Takahashi, 212 5th Ave. S., Seattle. Boarding any vessels, after customs boarding, but not entering customs enclosure”.

Signed by Roy L. Ballinger, Assistant Collector” and bearing the notation “Extended to Dec. 31, 1941.”

Since Mr. Takahashi only had a permit to go on the vessel, and since his first affidavit was that he went on the vessel and then went in the enclosure, the Court finds that Mr. Takahashi boarded the vessel and left the vessel for the enclosure where he had no written permit to be.

J. CHARLES DENNIS,
U. S. Attorney.

Received a copy of the within Proposed Amds. to B. of E. this 28th day of Aug., 1943.

VANDERVEER, BASSETT &
GEISNESS,
Attorneys for Defendants.

Received a copy of the within Proposed Amendment, this 28th day of Aug., 1943.

TRACEY E. GRIFFIN,

By [Illegible]

Attorney for Defendants.

[Endorsed]: Filed Sept. 3, 1943.

[Title of District Court and Cause.]

ORDER

This matter coming on for hearing this day on the plaintiff's motion for allowance of proposed amendments to the bill of exceptions, and the Court having heard and considered the arguments of counsel, it is therefore

Ordered and Adjudged that said proposed amendments to the bill of exceptions be and the same are hereby allowed and are hereby incorporated as a part of the bill of exceptions.

Done in open court this 7th day of September, 1943.

LLOYD L. BLACK,

United States District Judge.

Approved:

TRACEY GRIFFIN,

SAMUEL B. BASSETT,

Attorneys for defendants.

Presented by:

J. CHARLES DENNIS,

United States Attorney.

[Endorsed]: Filed Sept. 7, 1943.

PLAINTIFF'S EXHIBIT No. 9

[Foreign Characters]

[Pencil Notations] E-Y. O. B. C. 11/2/41. A. D.
R.

Hua Hsin Company

Telephone: 15914 320 Szechuen Road

Shanghai, July 4th, 1941.

Messrs. China Import & Export Company

212 5th Ave. So.

Seattle, Washington,

U. S. A.

Gentlemen:

As a consequence of our long business discussion with your representative, Mr. W. L. Chang, we wish to open our most cordial business relation with your goodselves by our placing an order with you for three new storage tanks, which we have heard that you have in your hands as available stock, and we beg to confirm our today's telegraphic order as follows, which we trust, would have been receiving your most careful attention at your end.

Article: New storage Tanks, capacity 80,000 Bbbs.
ea. Specifications and Blue-Prints as handed
by Mr. Chang.

Quantity: 3 (three) complete sets with complete accessories and construction materials, such as welding rods and flux.

Price: CIF Shanghai U. S. \$29,500.—per complete set.

Amount: U. S. \$88,500.—

Payment: Deduct U. S. \$71,700 from our credit account. Balance shall be remitted shortly. All particulars as per Mr. Chang's letter.

Packing: Usual Export Custom.

Shipment: From Pacific Coast July/August 1941.

Destination: Shanghai, China.

For your information, we might as well add here that these tanks are to be imported for the local storage purpose and will not be re-exported to any country with whom you are not on friendly terms.

Thanking you in anticipation for your kind attention to the above, we beg to remain, Gentlemen,

Yours faithfully,

HUA HSIN COMPANY.

M. H. KIANG,

Manager.

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 10-6-42.

PLAINTIFF'S EXHIBIT No. 10

Confirmation of Telegram

Mikuni-Shoko Co. Ltd.

Tokyo, Japan.

Cable Address: "XYMAS" Tokyo

Codes Used:

Bentley's 2nd Phrase,

Acme and Private

To NEWYR C. T. Takahashi & Co. Seattle,
Wash. U. S. A.

Date Sent June 27, 1941.

Code Used Duo & Private.

[Notation in ink: C T T 11/2/41 ADR (Illegible)]

Code	Translation
D I C E V	Duo Code
A W S U E	as arranged
S Z L I K	Refer to your letter of April 5th
X B U V L	are endeavoring to learn name of
A G D U D	composition of
P G T I M	12
O G U S W	Tubes
B S O Y G	even
A Z H U A	approximately
Y F B I V	such as
B U M A M	Nickel
B U Y C D	Chrome
P V S U N	or
N K A T W	Tungsten
N D R O U	Steel
G G I X V	at what temperature
H C U M U	can stand
E O R V V	Please telegraph promptly
I O A C O	what are owners ideas
U I D D V	stop
D I H O T	Do utmost to arrange earliest possible ship- ment
I F A I L	by every possible means

Code	Translation
O O B P V	Oil Tanks
F G Y R A	and
O G U S W	Tubes
J W A L E	our customers desires
P R Y E N	additional offers
O O B P V	Oil Tanks
Z V B O P	telegraph prospect

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 11

Confirmation of Telegram

Mikuni-Shoko Co. Ltd.

Tokyo, Japan.

Cable Address: "XYMAS" Tokyo

Codes Used:

Bentley's 2nd Phrase,

Acme and Private

To NEWYR Seattle (Wash. U. S. A.)

Date Sent June 28, 1941.

Code Used Duo.

[Notation in ink: C T T 11/2/41 ADR (Illegible)]

Code	Translation
R K K O E	Decided
B H V E W	Today
H K U S H	Name of firm (is)
A U H	hua
N I S H	hsin
C J Z O D	Company (See Names)
N Z Y G A	Address (es)
J B A O M	320

Code	Translation
N E U H C E Z S	szechuen
A U S J S	Road (s)
Y U P G T	Shanghai (China)
L D X U V	Con firm by telegraph
M F C O L	In order to prevent any misunderstanding
S T O P	stop
C G Z Y J	Without knowing
A G D U D	composition (of)
O G U S W	Tube (s)
K O X Y L	Negotiations distiontinued for the present
F B E H F	What shall we do, must have immediate reply

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 12

Confirmation of Telegram

Mikuni-Shoko Co. Ltd.

Tokyo, Japan.

Cable Address: "XYMAS" Tokyo

Codes Used:

Bentley's 2nd Phrase,

Acme and Private

To NEWYR Seattle.

Date Sent July 5, 1941.

Code Used Duo Code Inverted.

[Notation in ink: C T T 11/2/41 ADR (Illegible)]

Code	Translation
P L A O R	With reference to
A O P R W	Trucks(s)
R H Y M L	Mining machinery
T E I H R	you may receive

Code	Translation
R G V U V	telegram(s) from
Y A W N O T	Ton way
M S Y P D	Trading company
C B E L M	129
Y N X J I	Hamil-ton
Y D V S I	House(s)
I E C M M	170
E S G N A I K	Kiangse
A U S J S	Road(s)
Y U P G T	Shanghai (China)
S P A F J	instead of
G N A H C	Chang
S T O P	stop
G N A H C	Chang
E I L L I W	Willie
X G Y S J	is
O N H O K	Kohno
T K G A S	Representative of your
O C E I C	China Import & Export Co.

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 13

Confirmation of Telegram

Mikuni-Shoko Co. Ltd.

Tokyo, Japan.

Cable address "XYM AS" Tokyo

Codes Used:

Bentley's 2nd Phrase
and Private

To NEWYR Seattle.

Date Sent July 8th, 1941.

Code Used Duo.

[Notation in ink: C T T 11/2/41 ADR (Illegible)]

Code	Translation
U F I H R	You will receive
R G V U V	telegram from
O C A U H	HUA HSIN & CO.
O G U S W	tube
B G Y U H	for
U M Y J K	licence
E Y W N S	please rush
L I U R A	analysis

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 14

C. T. T. 11/2/41 ADR.

July 5, 1941

Dear Ted:

I cannot forgive myself for forgetting that yesterday was fourth of July and I worked. Should have declared a holiday and taken the day off like all patriotic Americans do. Its hotter than hell right now, Nubai just being over.

Getting down to serious business, I just received your letter No. 20. Was quite interested in the activity in Mexico and you can rest assured that I will do all possible to put it over over here. Have already dicussed the situation with Ikuta and upon receipt that you can ship the machinery out, will go into real action. Have explained to him regarding payment and I think they understand. Too bad that

everytime we use Shenker, it proves expensive. I guess its in the system and can't be gotten rid of. Anyway I hope to put something over so that we can get it back.

The trouble with rails, mercury and tin plate is that the gunbu has no direct interest in it and the association is handling all imports of these articles. Sometime in a pinch they go to the gunbu and ask for their help in order to get space. That is one reason the gunbu told us we better handle other things that is not formed into association. It is possible they gave us a lower price just to get rid of us so they can favor Mitui mitsubishi etc. who are already handling for the asociation and they are afraid that if we step in now, we will only raise the price. The space will be very difficult to get as we cannot use the gunbu for things that they are not directly connected with. The only other way to get around this is to go see Ikeda in Osaka and if I can get away for a couple of days, I may do this as I want to settle accounts with him anyway. The last time he was here, I asked him about the axles and wheels, and he said that the wheels are still stuck in the custom warehouse as they will not give him permit and he thinks he got that straightened out but they have a price set on all these stuff so he is afraid they will be able to sell unless at loss. Have checked upon the price set question and found that this is true. However, I did not get what that top price is so will soon find out thru other channels.

Marmon: Have already instructed Kohno to wire order for 150 sets of Marmon so you can get permit. Next time you wire them you better tell them that it is only to get permit as they thought that you wanted a definite form until I explained to them why you wanted it. I hope I am right. I told them to work on 150 sets and in the meantime you will try to get a permit and when you do get it we can ship it as soon as the factory can get them out provided they get the order. If no order then no business of course.

Shanghai office: The reason I was unable to send you the name of the Shanghai office is that it was not until shortly that Ikuta came to terms with the people over there. Seems they wanted too much commission. In order to make it easier for you in making application you can now say your representative is Willie Chang who is Schnicklefritz. The firm of Chang, you better not use. Hereafter you better use the two firms, namely, Hua Hsin Co. 320 Szechuen Road, Shanghai. and Tonway Trading Co., Hamilton House 129, 170 Kiangse Rd. Shanghai. These two firms are the ones that Mikuni has made definite connection with in Shanghai.

Wood Oil: This is going to be a tremendous business. Schnicklefritz was a little quick on the trigger and talked of five thousand tons thinking he could easily get this much. However, this is an enormous quantity and almost impossible to get on short notice. Mr. Ikuta went to Shanghai, and checked and found out that the wood oil at present

is handled thru Showa Tsusho, Mitsubishi etc. so he negotiated to get this thru the back door. The arrangement is a difficult one to explain here but will do my best. Wood oil that came and is coming into Shanghai is held by gunbu. They have control of all the stock. The material may cost only 10c in the front but when it comes to Shanghai, its worth a dollar. The government is up against it because everything that comes into Shanghai like nickle is way high in price, so they raise the price of export of wood oil to cover for the difference in price in imports. In this way they try to maintain the balance of trade. Mr. Ikuta has made very good arrangements to get the wood oil so for the time being you better work on the small lots of two or three hundred tons at a time. Your information regarding Chungking handling of oil was very much appreciated by Ikuta and the gunbu so if you can furnish any other true information, they would appreciate it very much and would put us in very good favor.

Mangyo:

Thru Assistance of Mr. Ikuta and his attorney, we are sending a letter to Manson. The gist of the letter is that I have talked it over with Seattle and Seattle insist that the responsible for the breakage is Manson fault, based on the argument that they did not sent an inspector to check the shipment as per contract and if they had the inspector would have objected because of no packing and we would have taken care of it and there would have been no trouble. The contract definitely stated we will

pack. Secondly when I made them a proposition that we will accept three hundred fifty thousand yen and give them the copper wire, I was too easy but since I made the proposition, we will abide by it provided they accept immediately. However if they still refuse to accept, I cannot stay here any longer so will leave it in the hands of the attorneys and all propositions that I made is hereby cancelled and we will claim for the full payment less nothing. Our weak point is that the contract calls for packing. Also one point is that it also stated that all repair for account of us. This they understand that before loading but the way the contract reads, it is possible that it could be interpreted as at arrival. Third, when Togo made the switch from the big payment to the small payment, he made an agreement in writing that we will wait until the inspection is over before we will take the second payment. On the other hand our strong point is that Mangy cannot stand a suit. Also their not sending a representative to check the loading. Have this letter already written up and we having the lawyer check it over once more. This lawyer will be no chiseler as he is Ikuta's good friend and his lawyer.

[Endorsed]: Filed May 15, 1942.

[Pencil Notation] 9-30-42.

PLAINTIFF'S EXHIBIT No. 15

C.T.T. 11/2/41 ADR.

July 12, 1941.

Dear Ted:

Shanghai: Its been a long time since Kohno and finally Ikuta went to Shanghai and was finally able to make arrangements. They have a very good set up and have a sort of an office there. In order to make work progress better it is better that we have our own name registered there to under Cieco so Ikuta is including our name in the office to and Kohno will be our representative there. He is known as Willie Chang, representative of Cieco. This is the only way that we will be able to work a lot of things over there that other firms can't. For instance, wood oil, is under control of the gunbu and in connection with a sort of Okurasho, they are letting Showa Tsusho and Mitsubishi handle the export of it but we are going to take it away altogether provided you can handle it on your side. All orders that Kohno cable you from Shanghai is for you to apply for license only and it is not firm. However, if you get the license, Business will no doubt be consumated. Ikuta will push it thru some-way. No business closed thru Shanghai is definitely closed unless confirmed by Mikuni here.

Vladivostok and Netherland East Indies is absolutely out. Even if you get permit and ship there, it is no good because you cannot tranship from there. The government will seize it for their own use and as the gunbu has no control there, they cannot do anything.

Kohno requests you to send him by first possible steamer, one Zenith portable radio. The kind he says when you open the lid music or something comes out. Understand this is for some member of the gunbu in Shanghai.

Quicksilver: We have been working hard in order to put this thru. First we tried here and it seemed impossible as the price but since Ikuta came back we have been working and pushing gunbu on this. Then we tried Shanghai but they said it was better we work it here so once again we pushed gunbu. The price they say is still high and we are wondering if it isn't because of the price of the container. It is usual that they buy mercury on basis that they return the flask. This would make a difference of around ten to fifteen yen. We do not know whether we will have to go thru the association or not yet. At present we are trying to get it thru directly thru gunbu. I hope you guys got this definitely in spite of your offer being on basis of with firm offer in hand because you cannot approach gunbu with this kind of term. If they decide to buy, you better have it or else our rep will be ruined.

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 16

C. T. T. 11/2/41 A D R.

July 15, 1941

Dear Ted:

Since writing previous letters on Quicksilver, I am sending the letters just the same, so that you can see the trend of action we have been making. The gunbu told us to go to the association which we did but the association talked of such cheap price that we gave up for a time. When you came back again with firm offer in hand, we once again approached gunbu and they started to go into action and told us to go once more to the association. Then the Association said that they have a contract with Mexico thru the embassy, for \$210.00 per flask C&F. This price includes the price of the flask. We approached the gunbu again when I talked with you on the phone and when you sounded doubtful of getting the quick, I immediately started to take steps to backwater. Gunbu said to wait awhile as they will check with the association, themselves. On the other hand Shoko sho said that even if our price was a little higher, it should be brought in, as they know that in spite of the contract existing until december for a thousand flask a month at 210.00 they are not coming in. Sometime some of it is coming but the contract is not being fulfilled. As a backwater I said that we are able to get it now but if they wait, as the gunbu suggest, we may not be able to get it even if we pay more than 220.00. I told them that if they come back later and say they want it, we will have to go thru the entire process of obtain-

ing it and negotiate on price all over again. This is my only out. Hereafter on anything with gunbu, it is very bad policy to quote on basis of with firm offer in hand. They have to move so many machineries and force the buyers and the shokosho to issue permit that they must have everything concrete. They cannot tell the users to buy and then have us tell them that the price is higher nor the stuff is unavailable. When you talk to gunbu its quite different from when you talk to ordinary business houses. If they decide to push anything for us, they want it to be just so. Of course, they will overlook if we cannot ship because of definite embargo like our tanks but even on tanks they are hounding us every day. We sure are on a spot on the three tanks. I doubt if a day goes by that they don't call us or say something about them. If we could only get those three tanks out, it would be a life saver and they would do almost anything for us. Before you get this letter we may get more action on the quicksilver. Be sure that Mexico can supply before we make a firm offer. Mexicans think nothing of cancelling contracts or of fall downs so we must be doubly careful to make sure that whoever we are dealing with down there are responsible and really have the stuff.

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 17

Cable Address: "XYMAS" Tokyo

Codes: Bentley's 2nd Phrase and Private

Phone: Shitaya (83) 5260. 5423. 9129

C. T. T. 11/2/41 ADR.

Mikuni Shoko Company Limited

(Mikuni Commerce & Industry Co. Ltd.)

No. 4, Gokencho, Kanda.

Tokyo, Japan.

Import Dept.

Our letter No. 29.

July 16, 1941.

Messrs. C. T. Takahashi & Co.,

212 5th Ave., So.,

Seattle, Wash.,

U. S. A.

Re: Shanghai:

Gentlemen:

As informed you previously by phone and telegrams, our Mr. Kohno has been working very hard everyday in Shanghai under the present difficult conditions as stated in our last respects No. 28 and as known well by your Mr. Osawa, and at last we have decided as follows:

- 1) HUA HSIN COMPANY, 320 Szechuen Road
Shanghai, Cable Add. HUACO. Phone:
15914.

This firm has been recommended by the Military people there, being their financial standing considered as very good, and after having made various

discussions and talkings about this firm at Shanghai, this company has been considered as most suitable for our purpose, which they agreed to co-operate with you and us. Good arrangement and better understanding have been secured. You therefore, intending to export to them the following goods, can now apply for the export license which we hope, you will surely succeed in securing from your government.

3. New Tanks 80s and its necessary accessories, which we ordered from you last year.
12. Reaction Vessels (Tubes) as per Blue Print and specification No. 1003 sent to us formerly.

With reference to the advance money paid by us to you already, it would become necessary to prepare some evidence that all the payment against the 3 new tanks have been made to you by HUA HSIN CO. in place of our firm, which please take note. We trust, by thus, we can present our business from being detected by any body else and can get the delivery of 3 tanks safely.

- 2) **TONWAY TRADING COMPANY: Hamilton House 129, 170 Kiangse Road Shanghai, Cable Add. TONWAY.**

This company is also creditable firm and recommended by Mil. people there and they came to accept their position to co-operate with us in the matter and we have decided to use their name in addition to the said HUA HSIN COMPANY. This is because that if you should have to receive so

much big orders at a time (in short period) from only one firm and you should have to apply for the license so many times under the same name and thus is likely to cause something doubt at your end when severe inspection has been put over on your applications. We trust, to have two firms in Shanghai, would be very effective in every respect to get our final success.

From this view aforesaid, the following goods has been ordered from you in the name of Tonway Trading Co. to let you apply the export license.

- 1 set of Mining Machinery (Indian Mine)
- 150 Marmon Herrington Trucks.
- 6 Locomotives (Pacific Coast)

We also trust you would have done every necessary steps to get the export license at your end.

3) W. L. CHANG: This is the Chinese name of Mr. Kohno, as the representative of your China Import & Export Co. so that he may be able to make proper arrangement or evidence in the matter. Hua Hsin Co. and Tomway Trading Co. can easily fix any contract with Mr. Chang in place of you, even as nominally and thus can be able to protect our plan being detected by any body else.

GENERAL: As a large number of important articles to be intended for Japan have been put on embargo, it has become now most important for you and us to obtain the export license from your Governmental Authorities and if you succeed in securing same, it will be safe for us to state that we

can fix the business at our side. We strongly ask you to obtain export license for any prospective articles.

Please bear in mind that all orders, except 3 Tanks placed with you through Shanghai firms, were only to have you apply for export license and should be subject to our final confirmation by wire or phone by ourselves in TOKIO.

4) Mining Machinery: This item must be talked in North China instead of Shanghai and we wished to let him rush to North soonest as possible, but as we had very many things to do in Shanghai for our GUNBU, we were obliged to stay him there for long time beyond our expectation. However, we will soon instruct him to go up to North in a few days to fix the Mining Machinery business there.

Hoping to hear from you a good news at the soonest possible time and also hoping anything trouble will not be occurred in our tactics, We are,

Yours faithfully,

FOR MIKUNI-SHOKO CO. LTD.
M. IKUTA

Director

MI/TH:

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 18

Cable Address: "XYMAS" Tokyo

Codes: Bentley's 2nd Phrase and Private

Phone: Shitaya (83) 5260. 5423. 9129

C.T.T. 11/2/41 A.D.R.

Mikuni Shoko Company Limited

(Mikuni Commerce & Industry Co. Ltd.)

No. 4 Gokencho, Kanda,

Tokyo, Japan.

IMPORT DEPT:

Our letter No. 30.

July 16, 1941.

Messrs. C. T. Takahashi & Co.

Seattle, Wash.

U. S. A.

Dear Sirs,

Reaction Vessel: We are looking forward for your information about this item as stated in our last respects. Please refer to No. 28. Up to this writing, the vessel offered by you could not be able to meet with our customers' requirement but under the conditions at the present, we think, if you could obtain export license, we could also obtain the order from them.

3 New Tanks: Should we fail in securing other various goods due to the reasons beyond our control, yet we are hopping to secure this item, first of all, because we shall have nothing to reward for our GUNBU's patronage. The Gunbu people are enthusiastically desiring to get the delivery of this

item and are encouraging us at all times. They are trusting us for our abilities as well as your own.

Mercury: The import of this item has been controlled by the Ministry of Com. & Industry and the associations of Japanese Mercury factory. Our effort to push the sale of Mexican mercury has made the Auth. and Association to approach us and we are going to wire you to get new offer from you, but this very day, Mr. Osawa has kindly informed us that he received a telegram from you to the effect that Mexican mercury has been put on embargo and nothing to do now. Anyhow, as we have got some good connection with the Military Auth. as well as Min. of Com. & Ind., please let us have every news if conditions turn better.

R. C. A. Receiver: This item was required by the Japanese Mil. Authorities in Shanghai and we telegraphed you to ask for your firm offer for this item. We thank you very much for your kind attention paid for this matter. This receiver would be used to steal out the special waves and the GUN-BU people told that RCA No. 234 model would be suitable better than No. 117 model.

The frequency is at maximum 300,000 and at first 550 kilo cycles or below. Output of power required, is 3 watt or over. This information has been transferred to you and received from you a telegram of 11th inst. requesting us to know weight, size and operating current also frequency in kilo cycles, number of band and asked us if we desire transmitter.

We therefore transferred the message to Mr. Kohno who replied that "RCA size 24"x12x12 20 kilo 60 cycles band same as frequency (300,000) applicable to 110 volt AC current, 220 volt AC Current, 110 DC current and 220 volt DC current. We think the above specification will be clear to you and you can arrange with the makers for production at your side, but to make the matter easier for you, we will consult with the electric engineer and let you know by telegram in a few days.

Nickel Copper Iron Ingot: We thank you for your so kind attention given to the matter, but carefully considering this item with Mr. Osawa, we have decided to give it up.

Record Loutit Process: Sample Oil has been presented to the Nenryosho (Mil. Fuel Dept.), where the Liet, Masuda's Report has been transferred, and the sample oil has been under inspection there now. We shall not lose any time to watch the result. We think in near future their inspection will be over, when we rush again in this matter.

Assuring you of our always attention to our busi-

ness with you and thanking you in advance for your
co-operation with us, we are,

Yours faithfully,

FOR MIKUNI-SHOKO CO.

LTD.

M. IKUTA,

Director

MI/TH:

[Endorsed]: Filed May 15, 1942.

[Pencil Notation]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 19

Department of State

[Stamped] Division of Controls, Apr. 18, 1941.

Department of State.

United States of America

Application for License to Export Articles and Ma-
terials (Other Than Arms, Ammunition and
Implements of War and Tin-Plate Scrap) Des-
ignated by the President as Necessary to the
National Defense Pursuant to Section 6 of the
Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

Original

Japan (Pencil Notation: China)

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.
- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.
- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under

appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

(1) Date of application April 16, 1941.

(2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

[Pencil Notation] China Imp.

(3) Name of applicant C. T. Takahashi & Company
By IRA L. EWERS.

(To be signed in ink)

(4) Consignee in foreign country

Name.

Mikuni Shoko Company

[In pencil]: Chinese Co.

Nationality Japanese

[In pencil]: Chinese.

Address

Street No. 4, Gokencho, Kanda

City Tokyo, Japan

State or province.....

Country Japan.

(5) Purchaser in foreign country
Name Mikuni Shoko Company
Nationality Japanese

Address

Street No. 4, Gokencho, Kanda

City Tokyo, Japan

State or province.....

Country Japan

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.

3

(7) Description of articles or materials to be exported

(8) Approximate net value

(each tank weighs about 270 long tons)	Complete New Steel Dis-mantled Storage Tanks and accessories for re-erection purposes.	\$22,500.00 f.o.b. Seattle per tank
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[Stamped] Division of Controls, Apr. 16, 1941.
Department of State.

[Stamped] Application Rejected. The Administrator of Export Control has determined that the proposed exportation would be contrary to the interest of the National Defense. Rejection No. H T-4-R.

May 14, 1941.

(9) Source of material to be exported (see paragraph (c) above):

Graver Tank Company, (Name)	East Chicago, Indi- (Address)
ana/Galamba Supply Company, Kansas City, Kansas.	

[Pencil Note]: Leave out Sanken Galamba. purchased through Sonken

(10) State the specific purpose for which the arti-

cles or materials are required and the name and address of the ultimate consumer in the foreign country:

[Pencil Note]: Leave out.

Storage purposes (by Mikuni Shoko Company.)

- (11) License to be sent to—(type or print plainly)

Name C. T. Takahashi & Company

[Pencil Note]: China Imp.

Street 212 Fifth Avenue South

City and State Seattle, Washington

- (12) Consignor in United States

[Pencil Note]: China Imp.

Name C. T. Takahashi & Co.

Nationality United States

Address:

Street 212 5th Ave. So.

City Seattle

State Washington

- (13) Seller in United States

Name C. T. Takahashi & Company

Nationality United States

Address:

Street 212 Fifth Ave. So.

City Seattle

State Washington

Nature of business Importers & exporters

- (14) Port of exit in the United States from which it is proposed to export the shipment.....

License is hereby granted to the applicant mentioned herein to export from the United States of America to Japan the articles or materials described

and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For official use only).

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

[Endorsed]: Filed May 15, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 20

Department of State

[Stamped] Received Department of State 1941
May 8 AM 10:01. Division of Communications and
Records.

[Stamped] Division of Controls May 9 9:51 AM
'41. Department of State.

United States of America

Application for License to Export Articles and Ma-
terials (Other Than Arms, Ammunition and
Implements of War and Tin-Plate Scrap) Des-
ignated by the President as Necessary to the
National Defense Pursuant to Section 6 of the
Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

Original

China

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for
each complete shipment to any one consignee,

and it may not include more than one commodity nor shipments to more than one country.

- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.
- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.
- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of

State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

- (1) Date of application May 5, 1941.
- (2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

Nationality Manchurian.

- (3) Name of applicant China Import & Export Company

By LEO NYE SING.

(To be signed in ink)

- (4) Consignee in foreign country

Name Koman Company

Nationality Manchurian

Address

2-Dan Kyowagai,

Street Yamato-ku

City Mukden

State or province.....

Country China

(5) Purchaser in foreign country

Name Koman Company

Nationality Manchurian.

Address

2-Dan Kyowagai,

Street Yamato-ku

City Mukden

State or province.....

Country China

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.

(7) Description of articles or materials to be exported

(8) Approximate net value

50,000 pieces

Automobile Roller Bearings

\$25,000.00

[Stamped] Application Rejected. The Administrator of Export Control has determined that this proposed exportation would be contrary to the interest of the National Defense. s Rejection No. DI-11-R. May 23, 1941.

(9) Source of material to be exported (see paragraph (e) above):

Various wreckers (automobile) & wholesale bearing dealers.

(Name)

(Address)

(10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:

To be used on horse-drawn coolie wagons and carts.

Koman Company, 2-Dan Kyowagai, Yamato-ku, Mukden, is the ultim to be sold to the trade as above explained.

- (11) License to be sent to—(type or print plainly)
 Name China Import & Export Company
 Street 212 Fifth Avenue South
 City and State Seattle, Washington
- (12) Consignor in United States
 Name China Import & Export Company
 Nationality American
 Address:
 Street 212 Fifth Ave. So.
 City Seattle
 State Washington
- (13) Seller in United States
 Name China Import & Export Company
 Nationality American
 Address:
 Street 212 Fifth Ave. So.
 City Seattle
 State Washington
 Nature of business Import & Export
 business
- (14) Port of exit in the United States from which
 it is proposed to export the shipment Pacific Coast
 ports

License is hereby granted to the applicant mentioned herein to export from the United States of America to China the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within

1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For Official Use Only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

[Stamped] Illegible.

[Endorsed]: Filed May 19, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 21

Department of State

[Stamped] Division of Controls. Jul. 23 4:30 PM '41. Department of State.

[Stamped] Division of Controls. Jul. 22, 1941. Department of State.

United States of America

Application for License to Export Articles and Materials (Other Than Arms, Ammunition and Implements of War and Tin-Plate Scrap) Designated by the President as Necessary to the National Defense Pursuant to Section 6 of the Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

Original

China

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.
- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.

Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.

- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.
- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

- (1) Date of application July 16, 1941.

(2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

(3) Name of applicant China Import & Export Company

By LEO NYE SING.

(To be signed in ink)

(4) Consignee in foreign country

Name Hua Hsin Company

Nationality Chinese

Address

Street 320 Szechuen Road

City Shanghai

State or province.....

Country China

(5) Purchaser in foreign country

Name Hua Hsin Company

Nationality Chinese

Address

Street 320 Szechuen Road

City Shanghai

State or province.....

Country China

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.

(7) Description of articles or materials to be exported

(8) Approximate net value

3

(each tank weighs about 270 long tons)

Complete New Steel Dismantled Storage Tanks and accessories for erection purposes.

\$29,500.00 f.o.b. Seattle per tank

[Stamped] Application Rejected. The Administrator of Export Control has determined that this proposed exportation would be contrary to the interest of the National Defense. Rejection No. H T-26-R. Aug. 1, 1941.

- (9) Source of material to be exported (see paragraph (e) above):

Graver Tank Company, East Chicago, Indiana.

(Name) (Address)

- (10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:

Storage purposes.

Hua Hsin Company, 320 Szechuen Road, Shanghai, China.

- (11) License to be sent to—(type or print plainly)

Name China Import & Export Company

Street 212 Fifth Ave. So.

City and State Seattle, Wash.

- (12) Consignor in United States

Name China Import & Export Company

Nationality United States

Address:

Street 212 Fifth Ave. So.

City Seattle

State Washington

- (13) Seller in United States
 Name China Import & Export Company
 Nationality United States
 Address: Street
 212 Fifth Ave. So.
 City Seattle
 State Washington
 Nature of business Importers & exporters

(14) Port of exit in the United States from which it is proposed to export the shipment Seattle, Wash.

License is hereby granted to the applicant mentioned herein to export from the United States of America to Shanghai, China the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has

expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For Official Use Only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

[Endorsed]: Filed May 15, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 22

Name C. T. Takahashi & Co.

NEWYR.

Address 212 5th Ave. So.

(Tel. No. If Delivery to Be Made by Telephone)

AFTER-HOUR INSTRUCTIONS—If Any

	Office Hours		Disposition To Be Made of Ur- gent Messages Received During
	M to	M	Closed Hours
Week Day	M to	M	
Saturday	M to	M	
Sunday and Holiday	M to	M	

BW209

Remarks 8-7-41

B W167 8-7-42

..... Date.....19.....

Permanent Address and After-Hour Instructions

2747A

[Endorsed]: Filed May 19, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 23

10

Name China Import & Exp. Co. "Cieco"

Address 212 Fifth Ave. So.—Tel ~~El 5363~~.

El 5166

(Tel. No. If Delivery to Be Made by Telephone)

Permanent Address Record
of Names Not Contained in Directories

Remarks

W444	10-13-27	W10	19-13-32	W304
W443	10-13-28	W443	10-13-33	10-13-37
W104	10-13-28	P138	10-13-34	W277
W513	10-13-30	W306	10-13-35	10-13-38
W636	10-13-31	W296	10-13-36	W349
Nites: Takehashi		Pr 3344		10-13-39

Check all cards against new issues of Telephone and city directories, and destroy unnecessary cards.
Get recd. on all msgs. dld.

[Endorsed]: Filed May 19, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 24

Indicate by (✓) Each Instruction to be Observed

✓ Received Messages	✓ Received Messages	✓ Originating Messages
Special Routing	Cash on Rec'd Collects	Charge Account
Get Receipt (Except E. M. D.)		
Do Not Drop (E. M. D. Only)	Do Not Telephone	Answer Phrase Authority
Drop When Closed All Hours	Deliver by Telephone No Advertising Matter	CR
Drop During Business Hours		
Rate Received Collects	Ofc Fone EL 5166	TA Spx 2/8/37M6-22-38

After-Hour Instructions, Etc.

X ÷ China Importing Co. by msgr.	Call Box No.
Dont fone aft 10p—DWR before 7a. O'nite	Sunday Hours
Osawa Rai 5166	Saturday Hours
Takahashi Ald 1708	8-1
Call ofc first	Week-Day Hours
C. T. Takahashi Co. 212 Fifth Ave. So.	8'-6

Instructions

Instructions not covered in itemized list should be written on a blank line, above after-hour instructions. Also use a blank line to supplement any of the itemized instructions. This card may also be used for permanent addresses and forwarding instructions.

To facilitate reference to the record, the following color signals should be used:

Purpose	Color	Remington Rand Catalogue No.
Get Receipt	Green	0374
After-hour Instructions } Forwarding Instructions }	Purple	0373

[Endorsed]: Filed May 19, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 29—Part 1

Department of State

[Stamped] Division of Controls, Jul. 25, 5:30 PM '41. Department of State.

[Stamped] Division of Controls. Jul. 23, 2:26 PM '41. Department of State.

United States of America

Application for License to Export Articles and Materials (Other Than Arms, Ammunition and Implements of War and Tin-Plate Scrap) Designated by the President as Necessary to the National Defense Pursuant to Section 6 of the Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

[Pencil Note] C. T. Takahashi, et al.

[Pencil Note] Edw. Osawa.

Duplicate

China

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.
- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.

- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
 Washington, D. C.

- (1) Date of application July 16, 1941.
- (2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

- (3) Name of applicant China Import & Export Company

By LEO NYE SING.

(To be signed in ink)

- (4) Consignee in foreign country
 Name Hua Hsin Company
 Nationality Chinese

Address

Street 320 Szechuen Road

City Shanghai

State or province.....

Country China

(5) Purchaser in foreign country

Name Hua Hsin Company

Nationality Chinese

Address

Street 320 Szechuen Road

City Shanghai

State or province.....

Country China

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.

3

(each tank weighs about 270 long tons)

(7) Description of articles or materials to be exported

Complete New Steel Dis-mantled Storage Tanks and accessories for erection purposes.

(8) Approximate net value

\$29,500.00 f.o.b. Seattle per tank [In Pencil]:

3
88,500

FSH

[Stamped] Office of Administrator of Export Control. Jul. 25, 1941. Disapproved. By J. W. Aug. 1, 1941.

[Stamped] Application Rejected. The Administrator of Export Control has determined that this proposed exportation would be contrary to the interest of the National Defense. Rejection No. H T-26-R.

[Stamped] Received Jul. 24, 1941. Department of Export Control.

(9) Source of material to be exported (see paragraph (e) above):

Graver Tank Company, East Chicago, Indiana.

(Name)

(Address)

- (10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:
Storage purposes.
Hua Hsin Company, 320 Szechuen Road, Shanghai, China.
- (11) License to be sent to—(type, or print plainly)
Name China Import & Export Company
Street 212 Fifth Ave. So.
City and State Seattle, Wash.
- (12) Consignor in United States
Name China Import & Export Company
Nationality United States
Address:
Street 212 Fifth Ave. So.
City Seattle
State Washington
- (13) Seller in United States
Name China Import & Export Company
Nationality United States
Address:
Street 212 Fifth Ave. So.
City Seattle
State Washington
- Nature of business Importers & exporters
- (14) Port of exit in the United States from which it is proposed to export the shipment Seattle, Wash.

License is hereby granted to the applicant mentioned herein to export from the United States of America to Shanghai, China the articles or mate-

rials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For official use only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

[Endorsed]: Filed May 19, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 29—Part 2

Department of State

[Stamped] Division of Controls. Apr. 18, 1941.

Department of State.

[Stamped] Division of Controls, May 8, 1941.

Department of State.

Appeal

United States of America

Application for License to Export Articles and Materials (Other Than Arms, Ammunition and Implements of War and Tin-Plate Scrap) Designated by the President as Necessary to the National Defense Pursuant to Section 6 of the Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

H T

Duplicate

Japan

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.
- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.

(h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

(1) Date of application April 16, 1941.

(2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

(3) Name of applicant C. T. Takahashi & Company

By IRA L. EWERS.

(To be signed in ink)

(4) Consignee in foreign country

Name Mikuni Shoko Company

Nationality Japanese

Address

Street No. 4, Gokencho, Kanda

City Tokyo, Japan

State or province.....

Country Japan

(5) Purchaser in foreign country
Name Mikuni Shoko Company
Nationality Japanese

Address

Street No. 4, Gokencho, Kanda

City Tokyo, Japan

State or province.....

Country Japan

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.

(7) Description of articles or materials to be exported

(8) Approximate net value

3

(each tank weighs about 270 long tons)

Complete New Steel Dismantled Storage Tanks and accessories for erection purposes.

Seattle per tank \$22,500.00 f.o.b. [In Pencil]: 67,500

[Stamped] Division of Controls, Apr. 16, 1941. Department of State.

[Stamped] Received, Apr. 24, 1941. Office of Administrator of Export Control.

[Stamped] Administrator Export Control. Appeal Disapproved Apr. 29, 1941. By.....

[Stamped] Application Rejected. The Administrator of Export Control has determined that this proposed exportation would be contrary to the interest of the National Defense. Rejection No. H T-4-R May 14, 1941.

[Pencil Note] 13091C.

[Stamped] 02309.

- (9) Source of material to be exported (see paragraph (e) above):

Graver Tank Company, East Chicago, Indiana/Galamba Supply Company, Kansas City, Kansas.

purchased through Sonken

(Name)

(Address)

- (10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:

Storage purposes by Mikuni Shoko Company.

- (11) License to be sent to—(type or print plainly)

Name C. T. Takahashi & Company

Street 212 Fifth Avenue South

City and State Seattle, Washington

- (12) Consignor in United States

Name C. T. Takahashi & Co.

Nationality United States

Address:

Street 212-5th Ave. So.

City Seattle

State Washington

- (13) Seller in United States

Name C. T. Takahashi & Company

Nationality United States

Address:

Street 212-Fifth Ave. So.

City Seattle

State Washington

Nature of business Importers & exporters

(14) Port of exit in the United States from which it is proposed to export the shipment.....

License is hereby granted to the applicant mentioned herein to export from the United States of America to Japan the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For official use only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

[Endorsed]: Filed May 19, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 29—Part 3

Department of State

[Stamped] Division of Controls, 71064, Feb. 10, 1941. Department of State.

United States of America

Application for License to Export Articles and Materials (Other Than Arms, Ammunition and Implements of War and Tin-Plate Scrap) Designated by the President as Necessary to the National Defense Pursuant to Section 6 of the Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

Duplicate

Japan

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.
- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.

- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

- (1) Date of application February 8, 1941.
- (2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

- (3) Name of applicant C. T. Takahashi & Company

By EDW. Y. OSAWA.

(To be signed in ink)

- (4) Consignee in foreign country
Name Mikuni Shoko Company
Nationality Japanese

Address

Street No. 4, Gokencho, Kanda

City Tokyo, Japan

State or Province.....

Country Japan

(5) Purchaser in foreign country
 Name Mikuni Shoko Company
 Nationality Japanese

Address

Street No. 4, Gokencho, Kanda

City Tokyo, Japan

State or Province.....

Country Japan

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.

(7) Description of articles or materials to be exported

(8) Approximate net value

3

(each tank weighs about 270 long tons)

Complete New Steel Dis-mantled Storage Tanks and accessories for re-erection purposes.

\$22,500.00 f.o.b. Seattle per tank
 [In Pencil]:
 \$67,500 total

[In Pencil]: 810 long tons.

(See letter attached)

[Stamped] Received Mar. 8, 1941. Office of Administrator of Export Control.

[Stamped] Received, Feb. 17, 1941. Office of Administrator of Export Control.

[Stamped] Division of Controls, Mar. 12, 1941. Department of State.

[Stamped] Office of Administrator of Export Control, Mar. 25, 1941. Disapproved. By R. S. C.

[Pencil Note] 13091C.

[Stamped] Application Rejected. The Administrator of Export Control has determined that this proposed exportation would be contrary to the interest of the National Defense. Rejection No. H T-4-R. Mar. 31, 1941.

- (9) Source of material to be exported (see paragraph (e) above):

Graver Tank Company, East Chicago, Indiana, purchased through Sonken Galamba Supply Company, Kansas City, Kansas.

(Name) (Address)

- (10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:

Storage purposes by Mikuni Shoko Company.

- (11) License to be sent to—(type, or print plainly)

Name C. T. Takahashi & Company
Street 212 Fifth Avenue South
City and State Seattle, Washington

- (12) Consignor in United States

Name C. T. Takahashi & Co.

Nationality United States

Address:

212-5th Ave. So.

City Seattle

State Washington

- (13) Seller in United States

Name C. T. Takahashi & Company

Nationality United States

Address:

Street 212 Fifth Ave. So.

City Seattle,

State Washington

Nature of business Importers and exporters

(14) Port of exit in the United States from which it is proposed to export the shipment.....

License is hereby granted to the applicant mentioned herein to export from the United States of America to Japan the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For official use only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

[Endorsed]: Filed May 19, 1942.

[Pencil Note]: 9-30-42.

PLAINTIFF'S EXHIBIT No. 29—Part 4
(Rejected)

Department of State

[Stamped] Division of Control, Apr. 18, 1941.

Department of State.

[Stamped] Division of Controls, May 8, 1941.

Department of State.

Appeal

[Written in pencil] Appeal.

United States of America

Application for License to Export Articles and Materials (Other Than Arms, Ammunition and Implements of War and Tin-Plate Scrap) Designated by the President as Necessary to the National Defense Pursuant to Section 6 of the Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

H T

Duplicate

Japan

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.
- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.

- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

- (1) Date of application April 16, 1941.
(2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

- (3) Name of applicant C. T. Takahashi & Co.
By IRA L. EWERS.

(To be signed in ink)

- (4) Consignee in foreign country
Name Mikuni Shoko Company
Nationality Japanese

Address

Street No. 4, Gokencho, Kanda

City Tokyo, Japan

State or Province.....

Country Japan

(5) Purchaser in foreign country

Name Mikuni Shoko Company

Nationality Japanese

Address

Street No. 4, Gokencho, Kanda

City Tokyo, Japan

State or Province.....

Country Japan

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.	(7) Description of articles or materials to be exported	(8) Approximate net value
--	---	---------------------------

6

(each tank weighs about 270 long tons)	Complete used steel dismantled storage tanks and accessories for re-erection purposes.	\$17,500 f.o.b. Seattle per tank [In Pencil]: 105,000
--	--	---

(See letter attached)

[Stamped] Division of Controls, Apr. 16, 1941.
Department of State.

[Stamped] Received Apr. 24, 1941. Office of Administrator of Export Control.

[Pencil Note] 13092C.

[Stamped] 02308.

[Stamped] Administrator Export Control. Appeal Disapproved, Apr. 29, 1941. By.....

[Stamped] Application Rejected. The Administrator of Export Control has determined that this proposed exportation would be contrary to the interest of the National Defense. Rejection No. H T-3-R. May 14, 1941.

- (9) Source of material to be exported (see paragraph (e) above):
Pepper Tank & Pipe Company, Denver,
Colorado Tanks from Casper, Wyoming.
(Name) (Address)
- (10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:
Storage purposes by Mikuni Shoko Company.
- (11) License to be sent to—(type, or print plainly)
Name C. T. Takahashi & Company
Street 212 Fifth Avenue South
City and State Seattle, Washington
- (12) Consignor in United States
Name C. T. Takahashi & Co.
Nationality United States
Address:
Street 212-5th Ave. S.
City Seattle
State Washington
- (13) Seller in United States
Name C. T. Takahashi & Co.
Nationality United States
Address:
Street 212-5th Ave.
City Seattle
State Washington
Nature of business Importers and exporters
- (14) Port of exit in the United States from which it is proposed to export the shipment Seattle, Portland & Tacoma.

License is hereby granted to the applicant mentioned herein to export from the United States of America to Japan the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For official use only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

PLAINTIFF'S EXHIBIT No. 29—Part 5

(Rejected)

Department of State

United States of America

Application for License to Export Articles and Materials (Other Than Arms, Ammunition and Implements of War and Tin-Plate Scrap) Designated by the President as Necessary to the National Defense Pursuant to Section 6 of the Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

Duplicate

Japan

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.

- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.
- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

- (1) Date of application February 7, 1941.
- (2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

- (3) Name of applicant C. T. Takahashi & Co.
By EDW. Y. OSAWA
(To be signed in ink)

- (4) Consignee in foreign country
Name Mikuni Shoko Company
Nationality Japanese
Address
Street No. 4, Gokencho, Kanda
City Tokyo, Japan
State or Province.....
Country Japan

- (5) Purchaser in foreign country
Name Mikuni Shoko Company
Nationality Japanese
Address
Street No. 4, Gokencho, Kanda
City Tokyo, Japan
State or Province.....
Country Japan

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.	(7) Description of articles or materials to be exported	(8) Approximate net value
--	---	---------------------------

6

(each tank weighs about 270 long tons) [In Pencil]: 1620 long tons	Complete Used steel dismantled storage tanks and accessories for erection purposes.	\$17,500 f.o.b. Seattle per tank [In Pencil]: \$105,000
--	---	---

(See letter attached)

[Stamped] Received Mar. 18, 1941. Office of Administrator of Export Control.

[Stamped] Received Feb. 17, 1941. Office of Administrator of Export Control.

[Stamped] 13092C.

[Stamped] Application Rejected. The Administrator of Export Control has determined that this proposed exportation would be contrary to the interest of the National Defense. Rejection No. H T-3-R. Mar. 31, 1941.

[Stamped] Office of Administrator of Export Control. Mar. 25, 1941. Disapproved. By R. S. C.

[Stamped] Division of Controls, 71065, Feb. 10, 1941. Department of State.

[Stamped] Division of Controls, Mar. 12, 1941. Department of State.

(9) Source of material to be exported (see paragraph (e) above):

Pepper Tank & Pipe Company, Denver,
Colorado Tanks from Casper, Wyoming.

(Name)

(Address)

- (10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:

Storage purposes by Mikuni Shoko Company.

- (11) License to be sent to—(type or print plainly)

Name C. T. Takahashi & Company

Street 212 Fifth Avenue South

City and State Seattle, Washington

- (12) Consignor in United States

Name C. T. Takahashi & Co.

Nationality United States

Address:

Street 212-5th Ave. S.

City Seattle

State Washington

- (13) Seller in United States

Name C. T. Takahashi & Company

Nationality United States

Address:

Street 212 Fifth Ave. S.

City Seattle

State Washington

Nature of business Importers & Exporters

- (14) Port of exit in the United States from which it is proposed to export the shipment Seattle, Portland & Tacoma.

License is hereby granted to the applicant mentioned herein to export from the United States of America to Japan the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For official use only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

PLAINTIFFS' EXHIBIT No. 34

November 12, 1940

Messrs. Mikuno Shoko Company, Limited
Tokyo, Japan

Gentlemen:

Confirming our Japanese telephone conversation with you on November 9th, relative to obtaining our export declaration permits for the two tanks on the steamer "Capillo" from Texas and the three from Seattle on the steamer "Aratama Maru" and/or the "Cuba Maru".

This completes our order for the Rikugun and we wish to tell you that we are certainly pleased that we are able to make this arrangement. We actually have bought eleven additional old tanks for the Kaigun order, of which, we have given you shipping instructions on ten, namely, three on the "Aratama Maru" and the three on the "Tosei Maru" and four on the "Florida Maru" during December.

Inasmuch as this is a large purchase and we have not yet received your letter of credit and we ourselves have already placed our deposit on our purchase for these last old tanks, we will use your credit funds here with ours until we finish shipping these tanks to Japan. In the meanwhile, we trust that you will rush the letters of credit as quickly as possible as it is very important not to lose even a day.

We know the difficulties at the present moment in Japan and at the same time, we wish to thank you for the sincere and fast cooperation you have given us to date on this matter.

New Tanks: We trust that you will exert your full efforts for new tanks because as stated in our cables to you, the situation of old tanks being under the question of embargo is very great and this was all officially caused by our competitors who did not buy old tanks before but now, who have entered the market and caused a great commotion in California.

In Los Angeles alone, they raised the market price with their random inquiry, that is, they went everywhere trying to buy old tanks because they were successful last month to ship some out and just lately caused so much trouble about shipping old tank that the customs officers at Los Angeles started sending wires to Washington, D.C. to advise them of the large future movement of old tanks to Japan. This brought about a special meeting in the State Department of the National Defense Board and they automatically placed the old tank business under license system, we believe, about the 5th or 6th of this Month.

The license division will automatically, we believe, reject any license application for old tanks. Everyone at the present moment has put in their applications for shipping old tanks. We know Mitsui & Company has put in application for many and also Mitsubishi for three out of Texas alone that we know of.

This is a very unfortunate thing because we were doing these old tank business on a very careful and quiet system. We were handling out tank business in cooperation with another very large domestic firm and billing it to ourselves here at Seattle and shipping it quietly from here and Portland.

The Customs people here are very friendly, honest and sincere and were not perturbed at all about this movement as we have been doing this business even before the embargo. These other new people were over-anxious and have caused a serious condition.

It is unfortunate that the Japanese government, Department of Commerce and Industry do not understand and realize the situation in America today. We, therefore, believe that a definite understanding of embargo will be established on these tanks shortly through really no fault of ours but purely and simply through the fault of our competitors, Messrs. Mitsui & Company, Mitsubishi Sheji Kaisha, Asano Bussan Company and other Japanese firms, who tried to buy these old tanks for shipment to Japan.

Please understand clearly that we are not complaining about their raising prices or disturbing the whole market but the fact that they caused an embargo and this is a serious blow not only to us but for the sake of getting the material, which is to be used for peaceful purposes brought to the attention of the Defense Commission and raising a matter of doubt in their minds, the purpose of these tanks after they arrive in the Orient.

On these above grounds, we sincerely believe that we are entitled to handle new tanks for Japan exclusively or at least the Japanese Government should allow us to make purchases for them inasmuch as we may suffer a great loss on these old tank business through no fault of ours but through competitors who are thinking only of making a profit in selling tanks.

We also are left with fourteen old tanks in Wyoming and two old tanks that we brought all the way up from Texas to Portland. These tanks belong to us and we are stuck and at the same time being pressed very strongly by the suppliers who sold us these tanks and who demand full payment immediately for all of the tanks or they desire to take away our deposit.

If you will recall, in our early cables exchanged between ourselves this spring, we stated that it is impossible in this country today to do any business subject to an embargo, therefore, we ourselves today have no backward road but must take the consequences.

When we buy new tanks for your orders, we are very careful and will not disturb the market on this side in any way. Our supplier of tanks is not the Chicago Bridge and Iron Company people, but they are the Graver Tank Manufacturing Company, a firm which is practically ten times larger than the Chicago Bridge and Iron Company.

We also would be buying these from a very domestic firm, our friends, Sonken Galamba Supply

Company, and these tanks will be delivered from Chicago to Seattle and/or Portland, from which port we intend to ship out to Japan quietly. Also, there are several companies here, namely, Messrs. Woodbury & Company of Portland, who will contact the local firms, and we can make our purchase through them locally so no one will know or cause any misunderstanding in this market. We are now only hoping that you will be able to proceed and get us some orders for new tanks and get us started in the new tank business.

We understand in one of our conversation with you that the Navy desires large-sized tanks. Please approach them and find out how large a size they desire, and we wish to advise that upon receipt of this letter, you will cable us immediately because we can get any sized tanks that they desire, A.P.I. tank or the Chicago Bridge and Iron Company specification tanks.

Awaiting your cable reply, we remain,

Yours faithfully,

G. T. TAKAHASHI & COM-
PANY

President.

CTT:sk

[Endorsed]: Filed Sept. 30, 1942.

PLAINTIFFS' EXHIBIT No. 35

November 24, 1940

Messrs. Mikuni Shoko Company, Ltd.

Tokyo, Japan

Gentlemen:

We wish to confirm our telephone conversation of the 23rd, in which you have concluded new tank business for us on the basis that old tanks will not be permitted and that you have closed the order for eleven new tanks.

We are extremely pleased to receive this news because we have been feeling quite badly since the Government has now put the old tanks on a license basis. This new license basis practically means that they will give us rejection in the event that we make an application for license permit to ship old tanks. We hope to let you know by next week Monday, the 25th or 26th, our time, the definite shipping dates of the new tanks if possible.

As stated in our phone conversation, we have shipping instructions from our suppliers from January/February shipment but are trying to get definite dates from them but we are cabling this information to you so you can get us immediately letter of credit, as you know, buying these new tanks mean we must take them without an embargo clause.

Also, business on new tanks practically insists on having full payment with order or a large deposit until necessary bank arrangements are made for the complete purchase.

Market conditions: Possibly, you cannot realize in Japan the existing situation in this country. This very big National Defense Program will spend billions of dollars and the steel business in America, the production capacity is way behind the demand. When you ask steel mill for delivery of steel, the earliest you can possibly get it in your hands is about ninety days to five months.

Each week, there are changes in this country in the steel business. oEverywhere, there is a great shortage of materials. Therefore, it is next to impossible to get long term option or do import or export business any more unless you have letter of credit on this side almost simultaneously with an order from Japan.

Therefore, we are writing you this letter with a view that you will prepare yourself for getting further new tank business from the Kaigun or from the Rikugan for shipment during March or April and upon receipt of this letter, please discuss this business thoroughly and if there is chance for this business, please get your order in now so that we may be assured of shipment at that time.

Awaiting your cable reply and thanking you very much for the order on the eleven tanks, we remain

Very truly yours,

C. T. TAKAHASHI & COM-
PANY

President

CTT:sk

[Endorsed]: Filed Sept. 30, 1942.

PLAINTIFF'S EXHIBIT No. 36

[Pencil Note]: Ruling Reserved

Cable Address: "XYMAS" Tokyo

Codes: Bentley's 2nd Phrase and Private

Phone: Shitaya (83) 5260. 5423. 9129.

Mikuni Shoko Company Limited

(Mikuni Commerce & Industry Co. Ltd.)

No. 4, Gokencho, Kanda,

Tokyo, Japan.

October 19, 1941.

Personal

Mr. C. T. Takahashi, President

Messrs. C. T. Takahashi and Company

Seattle, Washington

U. S. A.

Dear Mr. Takahashi,

It is a matter of congratulation that Mr. Osawa at last grasped the chance of going home at this occasion which we have been most anxiously waiting for.

We have a great honour in telling you that Mr. Osawa shared our business and private life with the greatest friendship and cooperation and we have been much delighted to have Mr. Osawa as our co-operator.

As to the details of the business, I trust, Mr. Osawa will give you the informations as well as my personal opinions of same and considering the situations now prevailing at both ends, allow me to abbreviate same. Only thing I want to emphasize here at this moment is that we have been working

with our best possible effort to bring the best results for mutual advantages, as you have done for us.

Fundamentally, I believe that the best policy as we can expect for mutual benefits is as repeated occasionally in my personal letters and the letters from my secretary, that you will work for us personally with your best efforts, as protecting and promoting your own interest and benefit and leaving all the problems relative which can be handled at this end to me entirely, and I shall work here for your interest and benefit as if protecting and promoting my own and leave the entire problems which can be solved at your end to you. Basing upon this fundamental idea, I am enclosing herewith my proposition for our contract of agency, which I shall be much pleased if you will kindly acknowledge. And thus, we shall have no room where the misunderstanding can be aroused.

It is a pity that our business has been brought to a deadlock owing to the sudden change of the international situations, in spite of our best efforts, however, please keep in mind that these our efforts shall be brought up to bear the best fruits when the chances arrive, to which end our best efforts are being paid even at this time.

I am looking for the coming peace-time, when our efforts will be recompensated and I shall represent you personally with the intentions mentioned above. Please prepare yourself for the coming days and do your best.

Your mother has been visiting me occasionally and was very glad to be informed that you are getting all-right because of your success in the local business. I join her here in praying for your continuous success in same.

With my best regards and wishes for your success and happiness. Mrs. Ikuta joins me in extending our warmest wishes for you and Mrs. Takahashi.

Yours faithfully,
For Mikuni-Shoko Co. Ltd.
M. GAITA.

Director

Encl: 2 Copies of Contract Form

MI/kk

PLAINTIFF'S EXHIBIT No. 37

Mikuni-Shoko Co. Ltd.

Tokyo, Japan

Confirmation of Telegram

Cable Address: "XYMAS" Tokyo

Codes Used:

Bentley's 2nd Phrase,

Acme and Private

Kohuo

From in Shanghai.

Date Sent July 15, 1941.

Date Received July 15, 1941.

Code	Translation
A C R	R C A
U Q V E O	size
L J J U S	24" x
N X I R S	12 x 12
J G I H F	20 Kilos
E Q S A C	60 Cycles
P O U M A	Band
E F I A N	same as
U I D J E	Frequency
U K H I A	applicable to
M U I I R	110 volts alteruating current
N V I I R	220 volts alteruating current
U D J I R	110 volts direct current
Y G J I R	220 volts direct current
Y C W O F	referring to your letter of 12th inst
S O Z U A	cannot
K M U N E	have
Y G G O B	United States Consul
M M E A F	issue
N E V W A	certrficate
W D Y N F	as per my letter of 11th inst

PLAINTIFF'S EXHIBIT No. 38

Confirmation of Telegram

Mikuni-Shoko Co. Ltd.

Tokyo, Japan.

Cable Address: "XYMAS" Tokyo

Codes Used:

Bentley's 2nd Phrase,
and Private

To NEWYR Seattle.

Date Sent July 10, 1941.

Code Used Duo & Private.

Code	Translation
Z Z Y Z H	Frequency
R E O G L	maximum
G P E C N	300,000
V C Y S H	at first
H Z M Y J	550 Kilo
R I F L E	cycle
Y D Y N B	or below
D K X Y O	power
I U N I M	3
C R G I X	watt
I E N A O	or over

PLAINTIFF'S EXHIBIT No. 39

Anten-Wireless- (Japanese Letters)

Imperial Japanese Telegraphs

R. No.	Time sent	By	Collated by	Charges
				16.22
	Office of Destination		Class
			
	Office of Origin	No.	Words	Postage stamps
	Tokyo		13	
Date	Time	Remarks		
July 2, 1941.		Anten		

N E W Y R

Seattle

N I A O P T G P U Y M I V V C D O Y S L R I L A M
R C A M E F R J M N O D W N U S V P L O G D G
U L F E X

- | | |
|-----------------------------|----------------------------------|
| 1. Make best possible offer | 6. RCA |
| C I F | 7. number |
| 2. Shanghai | 8. 234 |
| 3. 20 | 9. or |
| 4. Communication | 10. latest model |
| 5. receivers | 11. telegraph speci-fication for |

The address and signature of the sender

No. 4 Gokentyo, Kanda-ku, Tokyo.

Tel.: Sitaya (83) 5260, 5423, 9129.

MIKUNI SHOKO, CO., LTD.

PLAINTIFFS' EXHIBIT No. 40

Cable Address "XYMAS" Tokyo.

Codes: Bentley's 2nd Phrase and Private

Phone: Shitaya (83) 5260. 5423. 9129.

Mikuni Shoko Company Limited

(Mikuni Commerce & Industry Co. Ltd.)

No. 4 Gokencho. Kanda,

Tokyo, Japan.

Import Dept.

April 4, 1941.

Letter No. 21.

Mr. C. T. Takahashi, President.

Messrs. C. T. Takahashi & Co.,

Seattle, Wn., U. S. A.

Dear Mr. Takahashi, Re: Tractors, Mixers, etc.

The above mentioned construction machinery are very promising right now, since Lieutenant Col. Saito who has been in charge of tanks has been transferred to the staff of the construction section of the General Staff of the Japanese Expeditionary Force in China. I have written to him that I shall visit his place in near future to discuss the various problems, in which I have included these machinery.

Lieutenant Col. Saito is the officer who placed the first order for the tanks with us, after six months' quarrel with me. And when I came home he was more than pleased and introduced me to the Council of the Officers, to commemorate our works.

He was the officer who certified the landing of Mr. Osawa.

As I am arranging the catalogues and prints, I shall start in a few days for this business, and will give you my report in near future.

Assuring us of our best effort at all times, we are

Yours truly,
For Mikuni-Shoko Co., Ltd.
ILLEGIBLE
Import Dept.

KK

[Pencil Note]: Orig. recd. from T Nov 25 1941
[Initials illegible]

PLAINTIFF'S EXHIBIT No. 41

Confirmation of Telegram
Mikuni-Shoko Co. Ltd.
Tokyo, Japan

Cable Address: "XYMAS" Tokyo
Codes Used:
Bentley's 2nd Phrase
and Private

To NEWYR Seattle
Date Sent July 10, 1941.
Code Used Duo & Private.

Code	Translation
Z Z Y Z H	Frequency
R E O G L	maximum
G P E C N	300,000
V C Y S H	at first
H Z M Y J	550 Kilo
R I F L E	cycle
Y D Y N B	or below
D K X Y O	power
I U N I M	3
C R G I X	watt
I E N A O	or over

[Pencil Note]: Denied 10-6-42.

PLAINTIFF'S EXHIBIT No. 42

Confirmation of Telegram

Mikuni-Shoko Co. Ltd.

Tokyo, Japan

Cable Address: "XYMAS" Tokyo

Codes Used:

Bentley's 2nd Phrase

Acme and Private

From Seattle.

Date Received July 12, 1941.

Translation

Your Telegram Tenth Cannot Understand Specify Receiver Weight Size and Operating Current Also Frequency in Kilo Cycles Number of Bands Also Do You Desire Transmitter If So Telegraph Detailed Specification.

[Pencil Note]: Denied 10-6-42.

PLAINTIFF'S EXHIBIT No. 43

Confirmation of Telegram

Mikuni-Shoko Co. Ltd.

Tokyo, Japan

Cable Address: "XYMAS" Tokyo

Codes Used:

Bentley's 2nd Phrase

Acme and Private

Kohuo

From in Shanghai.

Date Sent July 15, 1941.

Date Received July 15, 1941.

Code used

Code	Translation
A C R	R C A
U Q V E O	size
L J J U S	24" x
N X I R S	12 x 12
J G I H F	20 Kilos
E Q S A C	60 Cycles
P O U M A	Band
E F I A N	same as
U I D J E	Frequency
U K H T A	applicable to
M U I I R	110 volts alteruating current
N V I I R	220 volts alteruating current
U D J I R	110 volts direct current
Y G J I R	220 volts direct current
Y C W O F	referring to your letter of 12th inst
S O Z U A	cannot
K M U N E	have
Y G G O B	United States Consul
M M E A F	issue
N E V W A	certfricate
W D Y N F	as per my letter of 11th inst

[Pencil Note]: Denied 10-6-42.

PLAINTIFF'S EXHIBIT No. 44

Confirmation of Telegram

Mikuni-Shoko Co. Ltd.

Tokyo, Japan

Cable Address: "XYMAS" Tokyo

Codes Used:

Bentley's 2nd Phrase

Acme and Private

From NEWYR Seattle Wash.

Date Sent July 7, 1941.

Date Received July 8th, 1941.

Code Used Inverted Acme.

Code	Translation
om(nso	Refer to your telegram of 2nd inst
ualko	no stock available
ipgaj	can possibly
wlahg	manufactured here
iyeto	telegraph
uidje	frequency
bvuuc	desired
jeh}ge	for
transmitters	Transmitters
pabha	also
recej	powers
zicul	receiver
vumso	Refer to your telegram of 5th inst
ethia	application has been made
oypko	stop
edahr	vessel
gjeyg	in whose name
sofer	shall we use
izhia	on application
gfyve	instruct them
xceqa	book order
swauh	12
edahr	vessel

Code	Translation
efier	used for
glofe	fertilizer
ityyi(u)	plant

[Pencil Note]: Denied 10-6-42.

DEFENDANT'S EXHIBIT No. A-3

Banco Aboumrad, S. A.
Apartado 138
Isabel La Catolica 33
Mexico, D. F.

[Stamped in left-hand margin]: Banco Aboumrad, S. A. DLS 20000-00-

Commercial Credit #1141
July 21, 1941.

Copy.

Original Issued.

Union Bank & Trust Co.
Eighth & Hill Sts.
Los Angeles, Cal.

Dear Sir(s)

We request you to open and transmit by mail a
documentary revocable credit in favor of China
Irrevocable
Import & Export Co., Seattle, Washington, for ac-
count of Proveedora Metalica S. A., Motolinia 20,
Mexico, D. F., in an amount not to exceed Twenty
Thousand Dollars, U. S. Currency. Available by
sight drafts drawn on your correspondents in Se-
attle. This credit is to cover shipment of about

250 Tons of 2,240 lbs. each of Used Steel Plates in first class condition, 5 ft. by 15 ft. and larger, 3/16 to 5/8 in. thickness.

To be shipped in one or more shipments xxxxxxxx f.o.b. Laredo, Texas or El Paso, Texas. Drafts must be accompanied by the following documents:

Ful set bills of lading in favor of Banco Aboumrad, S. A. or order blank endorsed.

Commercial invoice In name of Proveedora Metalica S. A.

Consular invoice Showing payment of the 5% fee.

Insurance policy Covering ordinary risks only from shipping point to Mexico D. F.....

Bills of lading to be dated on or before October 15, 1941.

We agree that drafts drawn under this credit will be honored if presented at drawee's address on or before October 15, 1941.

We are, Dear Sir(s).

Yours faithfully,

BANCO ABOUMRAD, S. A.

(Signature illegible.)

Export license issued by U. S. Government must be presented with documents.

N. B. Drafts drawn under this credit must state that they are "drawn under letter of credit No. 1141. Dated July 21, 1941.

[Endorsed]: Filed May 20, 1942.

[Endorsed]: Filed Oct. 1, 1942.

DEFENDANT'S EXHIBIT No. A-4

China Import & Export Company

Seattle, U. S. A.

Cable Address "Cieco"

All Codes Used

Agencies:-

Dairen

Mukden

Tientsin

Shanghai

Hankow

Hongkong

Kobe

Tokio

Contract. No. B-1-M

Contract of Sale.—

F.O.B. Terms.

Seller: China Import & Export Company.

Buyer: Proveedora Metalica, S. A., Mexico, D. F.

Commodity: Used steel plates.

Quality or grade: Plates to be 5 x 15 ft. and larger,
but plates to be in good and first class condi-
tion and to permit rivet holes. [Written in ink]
Thickness 3/16 to 5/8".

Quantity: Up to 250 (two hundred and fifty) tons
of 2240 lbs.

Packing: Loose.

Shipment: 250 tons of 2240 lbs.—within 60 days
after receipt of letter of credit and export license.

Price: \$75.00 (seventy five dollars, 0/100) U. S. Cy.
per ton of of 2240 lbs., F.O.B. Laredo, Texas,
U. S. A., or F.O.B. El-Paso, Texas, U S. A.
(Sellers option).

Weights: Railroad's weights to be final.

Payment: Irrevocable confirmed U. S. letter of
credit expiring October 15th., 1941, acceptable
by our bank to be established immediately.

Additional conditions: This contract is subject to
buyers obtaining necessary export license from
The Government of The United States of
America.

Accepted:

PROVEEDORA METALICA,
S. A.
GIL ALTSCHULER.
CHINA IMPORT & EXPORT
CO.
S. OKADA.

[Endorsed]: Filed May 20, 1942.

[Endorsed]: Filed Oct. 1, 1942.

DEFENDANT'S EXHIBIT No. A-5

Western Union Telegram

.NA25 36 NL-Mexico City 26

China Import And Export Co-

Seattle Wash-

1941 Sep 27 AM 4 14

Refer Yesterday Cable Please Suspend Shipment
Balance Tank Plates as My Firm Has Appeared in
the Black List Due to Mistake Stop Am Already
Trying This Matter With American Embassy and
Soon Will Be Cleared Publicly-

GIL ALTSCHULER.

[Endorsed]: Filed May 20, 1942.

[Endorsed]: Filed Oct. 1, 1942.

DEFENDANT'S EXHIBIT A-6

WESTERN UNION

Moga

Ta2 Dl Chg Tak Co

Mr Gil Altschuler

Provedora Metalica S A

Motolinia 20

Mexico City Mexico

Referring Your Wire Twentyseventh Under the
Circumstances We Must Consider Balance of Tank
Plates Cancelled as We Cannot Deal With Any
Firm Blacklisted by the United States Government
as We Only Can Operate According to Our Gov-

ernment Regulations Stop When and If You Are Able to Clear Up Your Position With Our Government We Will Be Glad to Entertain Further Business Proposals From You and If There Is Anything We Can Do at Present to Assist You Please xxxxxxxx Feel Free to Call on Us as We Desire to Cooperate in Any Way Possible.

China Import and Export Company.

[Stamped]: R2 Wu J 945A T.

[Endorsed]: Filed May 20, 1942.

[Endorsed]: Filed Oct. 1, 1942.

DEFENDANT'S EXHIBIT No. A-7

Provedora Metalica, S. A.

Compra Y Venta De Marquinaria Y Toda Clase De
Materiales De Hierro elefonos Ereic. 13 84-13-
Mex J - 56 - 23 Motolina 20 - Despacho 506
Mexico D. F.

July 26, 1941

China Import & Export Co.
Seattle, Wash.

Gentlemen:

Inclosed you will find the affidavit, properly legalized before the United States Consulate in this city, corresponding to our order for 250 (Two Hundred Fifty) tons of used Steel Plates in—first class condition in sizes 5 ft. by 15 ft. and larger and 3/16 to 5/8 in. in thickness, that we made through your Mr. Sig Okada during his stay in this city, asking you very kindly that upon receipt of this you should

make the corresponding petition to Washington, D. C., so as to obtain the export license as briefly as possible.

Once you have the license you will please advise us, so that we can mail to you the instructions to the respective shipments/

With kindest regards to Mr. Shenker and Mr. Okada, we are please to remain

Yours very truly,

PROVEEDORA METALICA,
S.A.

(Signed) G. ALLTSCHULER.

GA/ma

Proveedora Metalica S.A.

Mexico D.F.

Affidavit

To Whom It May Concern:

I, Gil Altschuler, Jewish, born in Warsaw, Poland, since 1923 living in Mexico, since 1932 Mexican Citizen, one of the associates and managers of the Proveedora Metalica, S. A., Motolinia 20, Mexico, D.F., being duly sworn, depose and say:

The Proveedora Metalica, S.A. are dealers in steel and iron goods. We have every time imported steel and iron goods to sell in the Mexican market.

Our order to the China Import & Export Company, of Seattle,—Washington, consisting of:

250 (two Hundred and Fifty) tons of 2,240 lbs. each, of used Steel plates in first class condition, 5 ft. by 15 ft., and larger, 3/16 to 5/8 in. in thickness.

is to be solely for domestic use in the Republic

of Mexico and is not to be reshipped or exported out of the Republic of Mexico.

Sworn to before me this 25 day of July, 1941.

G. ALTSCHULER.

Mexico, Julio 25 de 1941.—Con esta fecha se firmó y ratificó ante mi, lla presente, por el señor Gil Altschuler—Doy Fe-El Adscrito a la Notaria Publica No. 13.

LIC. ALVARO MAGANA
PEREZ.

United Mexican States, Mexico,
Federal District Consulate General of the
United States of America—ss.

I, Louis B. Mazzeo, Vice Consul of the United States of America at Mexico, Federal District, United Mexican States, duly commissioned and qualified, do hereby certify that Alvaro Magana Perez whose true signature and official seal are, respectively, subscribed and affixed to the annexed document, was, on the twenty sixth day of July, 1941, the day of his certification thereof, Notary Public No. 13 in Mexico, D. F., Mexico, to whose official acts faith and credit are due.

In Witness Whereof I have hereunto set my hand affixed the seal of the Consulate General at Mexico, D. F., Mexico, this twenty-sixth day of July, 1941.

Vice Consul of the United States of America.

Service No. 4853.

Fee \$2.00 U. S. cy.

Tariff No. 31.

[Endorsed]: Filed May 20, 1942.

[Endorsed]: Filed Oct. 1, 1942.

DEFENDANT'S EXHIBIT A-8

Department of State

[Stamped] Received, Department of State, 1941
May 31 AM 10:00. Division of Communications and
Records.

[Stamped] Air Mail.

[Stamped] Division of Controls, May 31, 11 41,
AM '41. Department of State.

United States of America

Application for License to Export Articles and Ma-
terials (Other Than Arms, Ammunition and
Implements of War and Tin-Plate Scrap) Des-
ignated by the President as Necessary to the
National Defense Pursuant to Section 6 of the
Act of Congress Approved July 2, 1940

(Application to be made in triplicate)

Original

Japan

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.

- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.
- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.
- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

- (1) Date of application April 23, 1941.
- (2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

- (3) Name of applicant C. T. Takahashi & Company

By CHARLES T. TAKAHASHI
(To be signed in ink)

- (4) Consignee in foreign country
Name Mitsui Bussan Kaisha, Ltd.
Nationality Japanese
Address
Street #3 Kaigan-dori, Kobe-ku
City Kobe, Japan
State or Province.....
Country Japan

- (5) Purchaser in foreign country
Name Mitsui Bussan Kaisha, Ltd.
National Japanese
Address
Street #3 Kaigan-dori, Kobe-ku
City Kobe, Japan
State or Province.....
Country Japan

(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.	(7) Description of articles or materials to be exported	(8) Approximate net value
--	---	---------------------------

100,000 pieces	Used Burlap Bags	\$10,250.00
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[Stamped] Application Rejected. This application has been rejected because it does not conform to existing requirements as published in export control schedules. A new application conforming to these requirements will be considered.

[Endorsed] Filed May 20, 1942.

[Pencil Notation] Addressed envelope.

- (9) Source of material to be exported (see paragraph (e) above):

From various dealers of burlap bags.

(Name) (Address)

- (10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:

For re-use in sacking feeding commodity.

Mitsui Bussan Kaisha, Ltd., #3 Kaigan-dori, Kobe-ku, Kobe, Japan.

- (11) License to be sent to—(type or print plainly)
 Name C. T. Takahashi & Company
 Street 212 Fifth Avenue South
 City and State Seattle, Washington

- (12) Consignor in United States
Name C. T. Takahashi & Company
Nationality American

Address:

Street 212 Fifth Ave. So.

City Seattle

State Washington

- (13) Seller in United States
Name C. T. Takahashi & Company
Nationality American

Address:

Street 212 Fifth Ave. So.

City Seattle

State Washington

Nature of business Importers & exporters

- (14) Port of exit in the United States from which it is proposed to export the shipment Pacific Coast Port.

License is hereby granted to the applicant mentioned herein to export from the United States of America to Japan the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For official use only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

PLAINTIFF'S EXHIBIT No. A-9

China Import & Export Company

Certificate of Firm Name

56166—8796

Know All Men By These Presents:

That I, the undersigned, C. T. Takahashi do hereby certify that I am conducting a general importing and exporting business under the assumed name and style of "China Import & Export Company", located at 212 Fifth Avenue South, in the City of Seattle, County of King, State of Washington; that I am the sole owner of said business; and I further certify that I shall so conduct my said business as aforesaid under the assumed name and style of "China Import & Export Company". That my post office address is as follows: C. T. Takahashi, 212 Fifth Avenue South, Seattle, King County, Washington.

In Witness Whereof, I have hereunto set my hand this 20th day of January, A. D. 1927.

C. T. TAKAHASHI.

Filed In County Clerk's Office, King County, Wash., Jan. 20, 1927. Abe N. Olson, Clerk. By S. R. Battenfield, Deputy.

In the Superior Court of the State of Washington
for the County of King

State of Washington,
County of King—ss.

No. 56166—8796

In the Matter of the
Certificate of Firm Name of
China Import & Export Company

I, Carroll Carter, County Clerk of King County, and ex-officio Clerk of the Superior Court of the State of Washington, for the County of King, do hereby certify that I have compared the foregoing copy with the original Certificate of Firm Name.

.....

.....

.....

in the above entitled matter as the same appears on file and of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

In Testimony Whereof, I have hereunder set my hand and affixed the Seal of said Superior Court at my office at Seattle this 29th day of September, 1942.

CARROLL CARTER,
Clerk.

By B. H. MOFFETT,
Deputy Clerk.

[Endorsed]: Filed Oct. 1, 1942.

DEFENDANT'S EXHIBIT A-10

In Reply Refer to
File No. 96

Treasury Department
United States Customs Service
Seattle, Wash.

[Cut, Fig. 5.]

Office of the Collector
District No. 30

Address All Communications
for this Office to the Collector

December 21, 1940.

C. T. Takahashi & Co.,
212-5th Ave. So.,
Seattle, Wash.

Sirs:

Referring to your letter of the 16th instant relating to the exportation of 18 dismantled storage tanks and your inquiry as to whether the provisions of Presidential Proclamation which become effective at midnight on December 29th next would prohibit the exportation of any of the said dismantled tanks which were not laden prior to that date, you are advised the following telegrams were sent to and received from the Secretary of State relative to the said matter.

“Referring to application of C T Takahashi and Company of Seattle requesting license to export eighteen complete used steel dismantled storage tanks and accessories for reerection purposes for exportation to Japan it is noted State Department

holds no license required for exportation under provisions proclamation July second last stop Said exporters advise that special permission has been granted by State Department for exportation of said eighteen tanks although some will be loaded subsequent to December 29th next when provisions of new proclamation become effective stop Please confirm whether said eighteen tanks may be exported subsequent to December 29th without further formality." Haas, Collector.

"Your telegram December 16 if eighteen dismantled storage tanks are intended for reerection and permanent installation and can be declared by exporter under commodity No. 6043 of Schedule B they may be exported without license before or after December 29 1940 Takahashi has represented to administrator of export control that such the case please report action taken." Cordell Hull Secretary of State.

Your attention is invited to the instructions from the Secretary of State that the said tanks may be exported without license before or after December 29, 1940 as your company has represented to the State Department that the said tanks are intended for re-erection and permanent installation and can be declared by the exporter under commodity classification 6043 of Schedule B of the Department of Commerce.

Respectfully,

ROY L. BALLINGER,

Assistant Collector.

Department of State

Branches:	Phones: EL. 5166
Tokio	EL. 5167
Vancouver, B. C.	Cable Address
Portland, Ore.	"CTTKS"
Oakland, Cal.	Bentley's Phrase Code
Agencies:	A B C 5th Edition
Osaka	Private
Kobe	Acme

C. T. Takahashi & Co.
Exporters and Importers
212-216-5th Ave. So.,
Seattle, Wash.

December 16, 1940

Mr. O. W. Dam,
Deputy Collector of Customs
Federal Building
Seattle, Washington

Dear Sir:

Confirming our conversation with you Saturday, we are pleased to enclose herewith two photostatic copies of our application which is properly marked and authority given us. Now, since receiving this special permission, we have definitely asked the Division of Control Board our position after December 30th, and we wish to go on record that they replied to us that this is a special permission granted to us on 18 tanks, only in view of the appeals and efforts in Washington to date. The latest proclamation does not affect us, but in the event of any additional tanks, we will be required to apply for license, and in fact, it is their opinion that we will not be granted same.

If there is any doubt in your mind as to our efforts to date, we desire you to wire Washington immediately. This last Friday and Saturday, we have been working very hard on this point as it is, you know, most important to us that we are allowed shipments after the 30th.

Now, everything has been delayed and our own program was delayed by previous misunderstanding, first of all, and secondly, now we have the element of weather where it is practically 10 below in Wyoming, which now prevents our speeding up cutting down the tanks, and this may cause a delay for immediate shipment which is really beyond our control in getting this material out.

I do not want to take any more chances in our business with the Orient, and on our advice from our attorney in Washington today, we received further instructions as follows:

“Enforcement Division Bureau of Customs Suggest If the Collector Is Still in Doubt He Should Telegraph the Division of Controls, State Department.”

Also for your own information, we have taken this up through our attorneys in Washington, and my own Managing Director is still in Washington and in New York until this whole situation gets cleared up, and I can have him do any work you desire.

We have personally had very lengthy conversations, discussions, and conversations with Colonel Trunk, Member of the National Defense Commission Board and Division of Controls, who has given

us his personal assurance that our application for license returned is in one way a kind of a license giving us authority for the 18 tanks regardless of this late proclamation, etc., and that we are to have the license marked on the back each time a shipment is made, until the total 18 tanks are shipped out.

We trust that we have covered all the points in our discussion with you the other day, and we also wish to thank you for the assistance and kind cooperation you have always given us.

Very truly yours,

C. T. TAKAHASHI & COMPANY.

C. T. TAKAHASHI.

President.

CTT:CK

Encl-2

No oral representations or statements of any representative of this firm shall be binding unless confirmed in writing by this company through its principals.

[Stamped] Received Dec. 16, 1940. Marine Division, U. S. Customs, Seattle.

[Stamped] Division of Controls, 11286, Nov. 19, 1940. Department of State.

United States of America

Application for License to Export Articles and Materials (Other Than Arms, Ammunition and Implements of War and Tin-Plate Scrap) Designated by the President as Necessary to the National Defense Pursuant to Section 6 of the Act of Congress Approved July 2, 1940

(Applications to be made in duplicate)

Original

Japan

(Insert here name of country of destination)

License No.

(For official use only)

General Instructions

- (a) One triplicate application should be made for each complete shipment to any one consignee, and it may not include more than one commodity nor shipments to more than one country.
- (b) Applications should be typewritten, with the exception of signature, but will be considered if written legibly in ink.
- (c) Articles and materials appearing under (7) below should be designated clearly and specifically, the type and model designation being included whenever applicable.

- (d) Values listed should represent the selling price only of the articles exported, and should not include such supplementary costs as packing, freight, etc.
- (e) Specify under paragraph (9) the name and address of the producer or manufacturer in the United States of each article and material to be exported or, if obtained outside of the United States, the name and address of the person from whom procured.
- (f) Unsigned applications or applications which omit essential information called for in the numbered spaces will be returned.
- (g) When countersigned and impressed with the seal of the Department of State, this application becomes a license.
- (h) Any attempt to export a commodity differing in any way from that licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress. Changes in the information set forth in licenses which have been issued under the seal of the Secretary of State can be effected by amendments which can be made only by the Department of State, or by collectors of customs or postmasters acting under the specific instructions of the Department of State.

Department of State,
Washington, D. C.

(1) Date of application November 19, 1940.

(2) Applicant's reference No.

The undersigned hereby applies for license to export the commodity described below and warrants the truth of all statements and answers herewith made regarding it.

(3) Name of applicant C. T. Takahashi & Co.

By EDW. Y. OSAWA.

(To be signed in ink)

(4) Consignee in foreign country

Name Mikuni Shoko Company

Nationality Japanese

Address

No. 4 Gokencho, Kanda

City Tokyo

State or Province.....

Country Japan

(5) Purchaser in foreign country

Name Mikuni Shoko Company

Nationality Japanese

Address

Street No. 4 Gokencho, Kanda

City Tokyo

State or Province.....

Country Japan

<p>(6) Number of units or weight (whichever is applicable). If weight is given in tons, specify whether long or short tons.</p>	<p>(7) Description of articles or materials to be exported</p>	<p>(8) Approximate net value</p>
---	--	----------------------------------

<p>18 (each tank weighs about 270 long tons)</p>	<p>Complete used steel dismantled storage tanks and accessories for re-erection purposes.</p>	<p>\$17,500 f.o.b. Seattle per tank</p>
--	---	---

(see attached letter)

[Stamped] No License Required for this Exportation Under the Regulations Issued Pursuant to the President's Proclamation of July 2, 1940.

Source of material to be exported (see paragraph (e) above):

- (9) 2 Sonken Galamba Supply Co., Kansas City, Mo. (tanks from Corpus Christi, Tex.).
- 14 Pepper Tank & Pipe Co., Denver, Colo. (tanks from Casper, Wyo.).
- 2 Keyes Tank & Supply Co., Casper, Wyo. (tanks from Casper, Wyo.).

(Name)	(Address)
--------	-----------

(10) State the specific purpose for which the articles or materials are required and the name and address of the ultimate consumer in the foreign country:

Storage purposes by Mikuni Shoko Company.

(11) License to be sent to—(type or print plainly)

Name Ira L. Ewers

Street 1308 F St., N.W.

City and State Washington, D. C.

- (12) Consignor in United States
 Name C. T. Takahashi & Co.
 Nationality United States

Address:

Street 212 5th Ave. So.

City Seattle

State Washington

- (13) Seller in United States
 Name C. T. Takahashi & Co.
 Nationality United States

Address:

Street 212 5th Ave. So.

City Seattle

State Washington

Nature of business Importers & Ex-
 porters

- (14) Port of exit in the United States from which it is proposed to export the shipment Seattle, Portland & Tacoma.

License is hereby granted to the applicant mentioned herein to export from the United States of America to Japan the articles or materials described and in the quantity given, on the following terms and conditions:

This license is not transferable and is subject to revocation without notice.

Shipment must be made from port of exit within 1 year from date of this license as given below under the seal of the Department.

Export licenses must be filed with the collector of customs at the port from which the shipment is departing from the United States prior to the proposed departure.

For Collectors of Customs and Postmasters

This license should be returned to the Secretary of State at the end of the month during which the last article of the shipment described therein was exported, or during which notice has been given that the remaining balance will not be shipped, or during which the license has been revoked or has expired. When the entire shipment has been exported, the license should be marked "Completed"; otherwise the returned license should bear a notation stating the reason for its return and the quantity and value of the articles actually shipped.

Collectors of customs or postmasters will endorse in the following spaces information concerning shipments made under this license:

[Blank form not filled in.]

Date of license.....

(For official use only)

For the Secretary of State:

By

(For official use only)

(When countersigned and impressed with the seal of the Department of State, this application becomes a license.)

[Stamped]: Received Dec. 16, 1940. Marine Division U. S. Customs, Seattle.

[Endorsed]: Filed Oct. 6, 1942.

DEFENDANT'S EXHIBIT No. A-11

H. M. Capron,
Pres. and Treas.

J. V. Sullivan
Secretary

Equipment Storage Corporation
Our Specialty
Heavy Machinery and Merchandise Space
Under Crane
Warehouse
7450 South Ashland Avenue
Chicago
Telephones
Office—Nevada 2400
Warehouse—Prospect 4616
Office
1150 South Washtenaw Avenue
Chicago

June 23, 1941

C. T. Takahashi and Co.,
212 5th Ave. So.,
Seattle, Washington

Attention—Mr. C. T. Takahashi

Gentlemen,

We wish to acknowledge receipt of your telegram of June 17th, and you can rest assured that, if any customers come to our warehouse to inspect your material, they will never find out from us where it came from, what the storage charges are or any arrangements you have made with us. We shall show them every courtesy and do everything we can to aid them in their inspection of the materials, but will go no further.

Defendant's Exhibit No. A-11—(Continued)

I am writing you another letter, which I am enclosing in this same envelope, written on the letter-head of the Equipment Corporation of America, a concern we are associated with, and would appreciate hearing from you in the enclosed, postage paid, envelope,

Yours very truly,
EQUIPMENT STORAGE
CORPORATION
JOS. V. SULLIVAN
Jos. V. Sullivan

JVS:MH

Equipment Corporation Of America
Telephone Nevada 2400
Chicago

Certified Construction Equipment
Reply to Chicago
Offices and Shops

Chicago: 1150 South Washtenaw Avenue

Pittsburgh: Post Office Box 933

Philadelphia: 1505 Race Street

Cable Address "E C A" Chicago and
Philadelphia

Codes: A B C of Western Union

June 23, 1941

C. T. Takahashi and Co.,

212 5th Ave. So.,

Seattle, Washington

Attention—Mr. C. T. Takahashi

Gentlemen,

The writer is also associated as Vice-President

Defendant's Exhibit No. A-11—(Continued)
and General Sales Manager with the above concern. We are one of the largest dealers in new and used equipment in the Country, and included in the products we sell are storage tanks of all kinds for the storage of aggregate, minerals and oil.

We believe we are probably in as good, if not better, position to dispose of these three tanks for you, if you desire to sell them, than anybody in the business, and are wondering if you could give us a description of these tanks, together with the price you are asking for same, f.o.b. cars, Chicago; this price to be net to us, and any profit that we make to reimburse us for our costs in advertising, selling and disposing of these for you, to be added on to this price by ourselves.

If you prefer that our prospective customers do not know for whom these tanks were manufactured, or by whom they were manufactured, we will respect your wishes. It would, of course, be necessary for us to guarantee to furnish blue prints for the erection of same and also guarantee completeness; in fact it might be necessary that we would have to show them erection drawings before they would place their order for same, and I would like to know whether you are in possession of such drawings, and could loan same to us if we had anybody ready to purchase same. Our terms of payment would be cash when loaded.

We understand that these are 80,000 gal. capacity each and what we would like to know would be the diameter, height and whether they have bottoms and tops, weight each and in fact the best

Defendant's Exhibit No. A-11—(Continued)
thing would be a condensed specification of the proposal that you received from the manufacturer.

If you could give us this information by return mail, in the enclosed, postage paid envelope, we would be very grateful, as we think we could dispose of these for you in a short while.

Yours very truly,
EQUIPMENT CORPORATION
OF AMERICA
JOS. V. SULLIVAN
Jos. V. Sullivan
General Sales Manager

JVS:MH

Bought Service Rented Sold
(Cut) E C A Rebuilt

Quotations Subject to Change Without Notice. All the Above Equipment Is Offered Subject to Prior Sale or Other Disposition.

All Agreements Are Contingent Upon Strikes, Lockouts, Accidents, Delays of Carriers or Other Delays Beyond Our Control.

June 27, 1941

Equipment Corporation of America
1150 South Washtenaw Avenue
Chicago, Illinois
Attention: Mr. Jos. V. Sullivan

Gentlemen:

We are very happy to note that you also have this company and at the present moment, we are

Defendant's Exhibit No. A-11—(Continued)
in negotiation with a certain party in Mexico and another in Los Angeles, who has a buyer in your district for our tanks.

We had been seriously contemplating on holding on to our tanks for at least \$25,000 each or better. These tanks are all complete and 80,000 barrel capacity tanks. In fact, it was our intention to sell them as-is, where-is your warehouse.

We expect a definite reply one way or the other from the parties with whom we are working these tanks and we should know outcome within the next ten days. In the event, we are unable to dispose of them to these parties, we shall be very glad to have you work your territory for us.

We understand there is a very large development in oils in Illinois and I am sure there should be a very strong demand for these items inasmuch as it is almost impossible to buy new tanks and get delivery within six months to a year.

We regret that we were not aware of your Equipment Corporation of America till this date. However, we are very pleased to make this good connection with your firm.

We may ask you to look around for our requirements in the future in your district for us.

Trusting that we may be able to get together with your goodselves on some business in the very near future, we remain

Very truly yours,
C. T. TAKAHASHI & COMPANY

By

CTT:sk

Defendant's Exhibit No. A-11—(Continued)

Airmailgram

Equipment Corporation of America

Certified Construction Equipment

Bought Service Rented Sold

(Cut)—E C A Rebuilt

Reg. Trade Mark

Main Office

Chicago: 1150 So. Washtenaw Ave.

District Offices

Philadelphia: 1505 Race St.

Pittsburgh: P. O. Box 933

Shops and Warehouses

Chicago

Philadelphia

Pittsburgh

Cable Address "E C A" Chicago and

Philadelphia

Codes: A B C or Western Union

Chicago

Telephone Nevada 2400 1150 So. Wastenaw Ave.

July 9, 1941

C. T. Takahashi and Co.,

212 5th Ave. So.,

Seattle, Washington

Attention—Mr. C. T. Takahashi

Gentlemen,

I appreciate your letter of June 27th, and the fact that we have heard nothing further from you makes me believe that your deal in Mexico and Los Angeles for the three tanks has not materialized.

Defendant's Exhibit No. A-11—(Continued)

I would appreciate your advising me by return mail if we may go ahead and offer these tanks for sale. Under present conditions, everything is being offered subject to prior sale and if you should get an order for these tanks from somebody else, before we sell them, there would be no harm done. In the meantime, if you would make your offering subject to prior sale and we were to sell them for you, you could gracefully withdraw your proposition from any other interested clients.

We have several people we believe might be interested in these tanks, and would appreciate your advising us if we may quote them on the basis of paying you \$25,000.00 each for them.

We would appreciate hearing from you by return mail.

We presume that we could secure the loan of the blue prints and specifications on these to show any party who was actually interested, and also presume that complete erection drawings would be available for anybody who would purchase these tanks.

I recently mailed you one of our latest stock lists and if you should receive any inquiries for equipment similar to that listed therein, we would be very pleased to hear from you.

Yours very truly,

EQUIPMENT CORPORATION
OF AMERICA

JOS. V. SULLIVAN

Jos. V. Sullivan

General Sales Manager

JVS:MH

Defendant's Exhibit No. A-11—(Continued)

All the Above Equipment Is Offered Subject to Prior Sale or Other Disposition. All Agreements Are Contingent Upon Strikes, Lockouts, Accidents, Delays of Carriers or Other Delays Beyond Our Control. Quotations Subject to Change Without Notice.

Equipment Corporation Of America

Telephone Nevada 2400

Chicago

Certified Construction Equipment

Reply to Chicago

Offices and Shops

Chicago: 1150 South Washtenaw Avenue

Pittsburgh: Post Office Box 933

Philadelphia: 1505 Race Street

Cable Address "E C A" Chicago and

Philadelphia

Codes: ABC or Western Union

July 26, 1941

C. T. Takahashi and Co.,

212 5th Ave So.,

Seattle, Washington

Attention—Mr. C. T. Takahashi

Gentlemen,

We would appreciate your advising sale price on the three 80,000 bbl. tanks which you have stored in the Equipment Storage Corporation warehouse.

As mentioned in a previous letter, if you could give us this price, subject to prior sale, and if we got an order for same and you had other places to

Defendant's Exhibit No. A-11—(Continued)
 put them, there would be no harm done. We have
 several places that we would like to quote on these
 tanks.

Yours very truly,
EQUIPMENT CORPORATION
OF AMERICA
JOS. V. SULLIVAN
 Jos. V. Sullivan
 General Sales Manager

JVS:MH

Bought Service Rented Sold
 (Cut) E C A Rebuilt

Quotations Subject to Change Without Notice. All
 the Above Equipment Is Offered Subject to Prior
 Sale or Other Disposition.

All Agreements Are Contingent Upon Strikes,
 Lockouts, Accidents, Delays of Carriers or Other
 Delays Beyond Our Control.

Western Union

8

Jul 29 1941

Ta1 Tws Chg Tak Co

Mr. Joseph V. Sullivan General Sales xxxxxx Man-
 ager

Equipment Corporation of America

1150 South Washtenaw Ave

Chicago Ill

Re Your Letter Twenty Sixth Would Be Inter-
 ested in Selling One Complete Tank Whih **XX**

Defendant's Exhibit No. A-11—(Continued)
Which We have in Your Storage As Is Where Is
Twenty Five Thousand Dollars Net to Us Stop
For Your Information in Event of Any Question
We Wish to Advise That We Are One Hundred
Percent American Firm Therefore Not in Any Way
Connected with the Freezing Order of Last Week
Takahashi President C. T. Takahashi & Co.

End TWS

R1 WUJ CHG 3 MINS 951-A TNX

Equipment Corporation of America
Telephone Nevada 2400
Chicago

Certified Construction Equipment
Reply to Chicago
Offices and Shops

Chicago: 1150 South Washtenaw Avenue

Pittsburgh: Post Office Box 933

Philadelphia: 1505 Race Street

Cable Address "E C A" Chicago and Philadelphia

Codes: A B C or Western Union

July 30, 1941

[In Pencil] Repd 8/2/41

C. T. Takahashi and Co.,

212 5th Ave. So.,

Seattle, Washington

Attention—Mr. C. T. Takahashi

Gentlemen,

We wish to acknowledge and thank you for your telegram of July 29th, and we have quoted on one of your three tanks on the basis of it costing us

Defendant's Exhibit No. A-11—(Continued)

We are very pleased to receive the information in the second part of your telegram that the freezing order of last week did not effect you in any way,

Hoping to be able to do business with you, we are,

Yours very truly,

**EQUIPMENT CORPORATION
OF AMERICA**

J. V. SULLIVAN

Jos. V. Sullivan

General Sales Manager

JVS:MH

Bought Service Rented Sold

(Cut)—E C A Rebuilt

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Lockouts, Accidents, Delays of Carriers or Other
Delays Beyond Our Control.

[Endorsed]: Filed Oct 6, 1942.

[Endorsed]: No. 10415. United States Circuit Court of Appeals for the Ninth Circuit. Charles T. Takahashi and Edward Y. Osawa, Appellants, vs. United States of America, Appellee. Transcript of Record Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed September 16, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.



In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 10415

CHARLES T. TAKAHASHI and EDWARD Y.
OSAWA,

Appellants and Defendants,

vs.

UNITED STATES OF AMERICA,

Appellee and Plaintiff.

STATEMENT OF POINTS RELIED ON

To the Clerk of the Above Entitled Court and to the
Attorneys for the Appellee:

You, and each of you, will please take notice
that the appellants, and each of them, will rely
on the following points on their appeal herein:

(1) Denial of the separate petitions of appellants for the return of private papers forcibly taken from their persons, in violation of their rights under the Fourth and Fifth Amendments to the Constitution of the United States. The parts of the record deemed necessary for the consideration of this point are:

(a) Petitions for return of private papers, and other property, of each of appellants (Bill of Exceptions, pages 1 to 6);

(b) Affidavits of appellants in support of said petitions (Bill of Exceptions, pages 51 to 56);

(c) Affidavits in resistance of said petitions (Bill of Exceptions, pages 8 to 50);

(d) Orders denying each of said petitions (Bill of Exceptions, page 57).

(2) Denial of appellants' motion to quash indictment. This motion was predicated upon the ground that the private papers so taken from appellants had been submitted by the United States District Attorney to the grand jury and had become the basis for the indictment, without which the District Attorney could not successfully prosecute the same. The parts of the record deemed necessary for the consideration of this point are:

(a) Motion to quash indictment and supporting affidavit of George H. Crandell (Bill of Exceptions, pages 6 to 8);

(b) Affidavits of appellants in support of said motion (Bill of Exceptions, pages 51 to 57);

(c) Affidavits in resistance of said motion (Bill of Exceptions, pages 8 to 50);

(d) Order denying said motion (Bill of Exceptions, page 58).

(3) Admission in evidence, over appellants' objections of private papers and letters forcibly taken from their persons. Appellants contend that the use of such evidence by the Government in connection with their prosecution violated their rights under the Fourth and Fifth Amendments to the Constitution of the United States. The parts of the record deemed essential for the review of this point are:

(a) The parts of the record designated in connection with point (1) above;

(b) The entire narrative transcription of the evidence (Bill of Exceptions, page 58 to 151);

(c) Appellants' objections to the admission in evidence of private papers and letters forcibly taken from appellants' persons, the trial court's rulings and exceptions taken by appellants to such rulings (Bill of Exceptions, pages 58 to 151).

(4) Denial of motions made by the appellants, and each of them, to dismiss the indictment at the end of the Government's case, on the ground that the evidence was insufficient, as a matter of law, to sustain any count of the indictment, and the denial of their separate motions made at the close of all the evidence to dismiss and for direction of ver-

dicts of not guilty on each and every count of the indictment. The parts of the record deemed essential for the review of this point are:

(a) Indictment (Transcript, page 2);

(b) The entire narrative transcription of the evidence and the proceedings of the court, including motions which appellants interposed at the close of the Government's case and at the close of all the evidence, the rulings of the court on each of said motions and the exceptions taken to said rulings by the appellants (Bill of Exceptions, pages 58 to 151).

(5) The trial court's charge to the jury exceeded the bounds of fair comment and was highly prejudicial in that it was a biased, unfair and one-sided analysis of the evidence, and was argumentative. The parts of the record deemed essential for the consideration of this point are:

(a) The entire narrative transcription of the evidence (Bill of Exceptions, pages 58 to 151);

(b) That part of the charge wherein the court comments upon the evidence (Bill of Exceptions, commencing at page 177, line 15, and ending at page 184, line 7);

(c) The exceptions which the appellants, and each of them, took to that portion of the charge (Bill of Exceptions, page 185, line 16, to page 187, line 5).

(6) The instruction which the court gave the jury concerning the evidence of appellants' good

character and reputation was contrary to law, because it failed to tell the jury that if this evidence raised a reasonable doubt in their minds as to appellants' guilt they are entitled to the benefit of that doubt and the jury's verdict should, therefore, be not guilty. On the contrary, the instruction which the court gave, by direct statement, innuendo and suggestion, made good reputation of doubtful value and probably a positive disadvantage to appellants. The portions of the record essential for the consideration of this point are:

(a) The instruction which the court gave (Bill of Exceptions, page 184, line 21, to page 185, line 6);

(b) The exceptions which the appellants took to this instruction (Bill of Exceptions, page 186, line 18, to page 187, line 13);

(c) The supplemental instruction which the court gave concerning evidence of good character and reputation (Bill of Exceptions, page 187, lines 17 to 27 inclusive);

(d) Exceptions noted following the giving of said supplemental instruction (Bill of Exceptions, page 189, lines 15 to 20, inclusive).

SAMUEL B. BASSETT,

Attorney for Appellant.

Charles T. Takahashi.

TRACY E. GRIFFIN,

Attorney for Appellant, Edward Y. Osawa.

Received a copy of the within Statement of Points this 14th day of Sept., 1943.

J. CHARLES DENNIS,
Attorney for U. S.

[Endorsed]: Filed Sept. 17, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PORTIONS OF RECORD
TO BE PRINTED

Comes now the United States of America, appellee in the above entitled case, and designates the following portion of the record that it desires to be printed:

Instructions of the Court in full.

J. CHARLES DENNIS
Attorney for Appellee.

Comes now the appellant in the above entitled case, and designates the following portions of the Bill of Exceptions to be printed:

All exhibits admitted in evidence in the case.

TRACY E. GRIFFIN
SAMUEL B. BASSETT
Attorneys for Appellants.

[Endorsed]: Filed Nov 15 1943. Paul P. O'Brien, Clerk.

IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHARLES T. TAKAHASHI and EDWARD Y. OSAWA,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION

FILED

JAN 3 - 1944 BRIEF OF APPELLANTS

PAUL P. O'BRIEN,
CLERK

SAMUEL B. BASSETT,
Attorney for Appellant, Charles T. Takahashi,
811 Alaska Building, Seattle 4, Washington.

TRACY E. GRIFFIN,
Attorney for Appellant, Edward Y. Osawa,
1107 American Bldg., Seattle 4, Washington.

No. 10415

IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHARLES T. TAKAHASHI and EDWARD Y. OSAWA,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
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NORTHERN DIVISION

BRIEF OF APPELLANTS

SAMUEL B. BASSETT,
Attorney for Appellant, Charles T. Takahashi,
811 Alaska Building, Seattle 4, Washington.

TRACY E. GRIFFIN,
Attorney for Appellant, Edward Y. Osawa,
1107 American Bldg., Seattle 4, Washington.

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IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHARLES T. TAKAHASHI and EDWARD
Y. OSAWA, *Appellants,*

vs.

UNITED STATES OF AMERICA,
Appellee.

No. 10415

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION

BRIEF OF APPELLANTS

STATEMENT CONCERNING JURISDICTION

The appellants were indicted (Tr. 2) and convicted (Tr. 20) for violation (1) of Section 88, Title 18, U.S.C.A., and (2) of Section 6 of the Executive Order approved by the President March 15, 1941, effective April 15, 1941, promulgated pursuant to Section 99, Title 50, U.S.C.A., and (3) of Section 80, Title 18, U.S.C.A.

The jurisdiction of the District Court is sustained by the provisions of Title 28, Section 41, Sub. 2, U.S.C.A., and the jurisdiction of this court by the provisions of Title 28, Section 723(a) U.S.C.A., and the rules promulgated by the Supreme Court of the United States pursuant thereto.

ABSTRACT OF THE CASE

The appellants Charles T. Takahashi and Edward Y. Osawa (together with three others, all residents of Japan and never apprehended) were charged in an indictment having three counts with the following offenses:

COUNT I. A conspiracy (in violation of Sec. 88, Title 18, U.S.C.A.).

- (a) To violate Section 6 of an Executive Order approved by the President, March 15, 1941, effective April 15, 1941, promulgated pursuant to Section 99 of Title 50, U.S.C.A., which Section 6 reads as follows:

“The country designated on the application for license as the country of destination shall in each case be the country of ultimate destination. If the goods to be exported are consigned to one country with the knowledge that they are intended for trans-shipment thence to another country, the latter country shall be named as the country of destination,” it being alleged to be the plan, purpose and object of such conspiracy to cause China to be designated on an application for license to export three new storage tanks as the country of destination, whereas the country of ultimate destination was Japan; and further,

- (b) To violate Section 80 of Title 18, U.S.C.A., by causing to be made in said application false and fraudulent statements, such statements being made in a matter within the jurisdiction of the Department of State.

COUNT II. Violation of said Paragraph 6 of said Presidential order by filing said application.

COUNT III. Violation of said Section 80 of Title 18, U.S.C.A., by the same act of filing.

(Indictment R. 2)

The jury trying the case returned a verdict of guilty as to both defendants on all three counts of the indictment (R. 20)

Motion for a new trial was filed, argued and overruled.

The court rendered judgment and sentence upon the verdict as follows:

Takahashi, 2 years on Count I; 2 years on Count II; 5 years on Count III, all sentences to run concurrently (R. 21).

Osawa, 2 years on Count I; 2 years on Count II; 5 years on Count III, all sentences to run concurrently (R. 24).

Each appellant gave notice of appeal (Takahashi, R. 26; Osawa, R. 30).

There is but one record and it encompasses all the evidence given upon the trial, in narrative form.

The rights and contentions of the two appellants being so similar, if not identical, they join in a single brief.

Of the absent defendants—Ikota is a director of Mikuni-Shoko Company and Kohno (alias Chang) is connected with the same company. Kiang is manager of Hua Hsin Company at Shanghai.

The facts developed upon the trial are these:

STATEMENT OF THE FACTS

Appellant Charles T. Takahashi is an American citizen, born in the United States of Japanese ancestry. He is 39 years of age, and has lived in Seattle all his life.

His father arrived in Seattle in 1892, and became engaged in the importing and exporting business to and from the Orient. He died in 1920, and upon his death Charles T. succeeded to the business (R. 176).

The business has been prosecuted for the most part under the firm name of "Charles T. Takahashi & Co.," though appellant is the sole owner. But since 1929 he has also used the name "China Import & Export Company." As this was an assumed name and required registration under the laws of the State of Washington he caused the same to be duly registered in that year (R. 178). The purpose of this second name was a sort of concession to any Chinese customers of sensitive nature who might not care to do business with a concern obviously dominated by Japanese names, and the date of registration is important only because the government proceeded upon the notion that it was of recent occurrence.

Appellant did a general importing and exporting business, mostly with China and Japan, the items of importation being largely fertilizers, while he exported "anything they had a market for," such as lumber, worn rubber tires, metal junk, automobile bearings and mining machinery (R. 177). They had branch offices in Portland, Oakland, Vancouver and Tokyo, and until disrupted by war conditions they did a considerable business (R. 181).

The appellant Edward Y. Osawa is likewise an American citizen of Japanese ancestry. He was born in Seattle, and has lived there all his life. He is 40 years old. The two appellants have known each other since childhood. In 1929 Osawa became employed by Takahashi & Co., and has been so employed ever since, working up to the position of general manager (R. 201).

By 1940 Takahashi & Co. did considerable business in the exportation to Japan of large second-hand oil tanks used for the storage of oil. Their customer was Mikuni-Shoko Company, Limited, which was a "recognized, standard financial concern" in Tokyo (R. 192). Mikuni-Shoko Company would place an order with Takahashi & Co. for a few tanks at a time, and the latter would go into the market here, acquire the tanks, and ship them to Mikuni-Shoko Company at Tokyo. While appellants did not have definite word of mouth information on the subject, it became very evident to them in the course of business that Mikuni-Shoko Company were acting in behalf of the Japanese army or navy, or both (R. 213-214).

Mikuni-Shoko Company thus ordered about 40 of these tanks (R. 183) and most of them had been shipped, when about August, 1940, the United States government promulgated an order inhibiting the export, without special license therefor, of scrap steel to Japan. Takahashi & Co. at this time had some 18 left on hand, and the question arose whether these used tanks were "scrap steel" and required such license. Accordingly, application was made to the proper authorities at Washington for permission to

ship. The application came back with notation thereon, "no license required." The tanks accordingly went forward (R. 188-189, 202).

So much for history.

Then Mikuni-Shoko Company placed an order with Takahashi & Company for eleven new tanks (R. 203).

It was impossible to acquire so many, but Takahashi succeeded in placing an order for the manufacture of three of the eleven with the Galamba Supply Company, of Kansas City, Kansas, who in turn sublet the contract to the Graver Tank Company, of East Chicago, Illinois (R. 203). While these three tanks were in process of manufacture a presidential order was promulgated giving citizens ten days to export all outstanding orders, after which time a special license would be required (R. 202).

Realizing that the tanks could not be completed and shipped within the time limited, Takahashi sent Osawa to Washington to try to consummate some legal arrangements whereby the tanks could go forward. Osawa was accompanied by William Shenker, a lawyer from Portland, Oregon, and who was manager of the Takahashi branch office there. In Washington they employed an attorney, Ira S. Ewers, to assist them. The latter did most of the work. He filed two applications for permission to ship the three tanks. The first was abortive for reasons of form. The second was filed some time in March or April, and was rejected. An appeal was taken to some proper department, and with that appeal pending the parties left for home (R. 190).

When they left Washington both Osawa and Shenker were firmly of the opinion that the appeal would avail nothing, and so reported to Takahashi (R. 204; 214-215). All things considered, Takahashi was imbued with the same idea, and further, that all business with Japan was at an end. Accordingly, while the appeal was still pending, he sent Osawa to Tokyo (R. 200).

Osawa was instructed to settle a disputed claim Takahashi & Co. had with a concern in northern China, settle with Mikuni-Shoko Company the matter of the tanks in their complicated situation, and then close the Takahashi office in Tokyo. That done, he was to go on to Shanghai, China, and there make an arrangement with some concern whereby Takahashi & Co. might import from China wood oil much in demand in this country for the making of paint (R. 191-192; 204). And Osawa was armed with a general power of attorney to be used as required.

Arriving in Tokyo, Osawa made a side trip into North China and settled the disputed account there (R. 205). He then settled with Mikuni-Shoko Company concerning the tanks, by returning to them the moneys they had advanced upon the cost thereof, about \$70,000.00, and another \$71,000.00 received by Takahashi & Co. advance on freight. These payments were effected by an exchange of credit and trading yen for dollars (R. 194-199; 216-217).

That left Takahashi & Co. the owners of the tanks. It also foreclosed Mikuni-Shoko Company from all interest therein. They were out, and further dealings with them were at an end (R. 197).

Having done these things Osawa was now clear of all business in Japan, and he closed the Takahashi & Co. office. He was now ready for his trip to Shanghai. But he did not go to Shanghai. He found that Japan was in control of that port and refused admission to foreigners, of whom they considered Osawa one, as indeed he was, being American-born though of Japanese ancestry (R. 205). He then, quite naturally, appealed to Mikuni-Shoko Company for assistance in getting the representation in Shanghai and they, quite as naturally, agreed to do so (R. 207). After some negotiating by Mikuni-Shoko Company and goings back and forth between Tokyo and Shanghai Mikuni-Shoko Company decided upon the firm name of Hua Hsin Company, in Shanghai, as such representative. Accordingly they sent to Takahashi & Co. in Seattle, a complicated cablegram reading:

“Decided today name of firm is Hua Hsin Company, address 320 Szechuan Road, Shanghai. Confirm by telegraph in order to prevent any misunderstanding. Stop. Without knowing composition of tubes negotiations discontinued for the present. What shall we do. Must have immediate reply.” (Plaintiff’s Exhibit No. 3)

After a definite firm in Shanghai had been arranged as a Takahashi & Co. representative, Osawa suggested to Mikuni-Shoko Company “why not offer these tanks which we have as a starter for our connection in China” (R. 220). This was a natural suggestion but proved to have been an unfortunate one for appellants, because it apparently inspired in Mikuni-Shoko Company a desire to hook-in again on the tank deal, and caused them not only to inspire a

pretended order from Hua Hsin Company to the China Import & Export Company for the three tanks, but to write to Takahashi & Co., and to be received by them, some letters which, though unanswered, fell into the hands of the government, and resulted in this prosecution. More details of this later.

About July 16, Takahashi received from Hua Hsin Company in Shanghai by cablegram directed to China Import & Export Company an order for the purchase of these tanks. Takahashi had little faith in this order, but made and filed in Washington an application for permission to ship them to Hua Hsin Company at Shanghai. (This is the application complained about). The record does not furnish a copy of this order, for the original was attached to the application (as required by regulation), and forwarded to Washington, where it has ever since remained (R. 186). However, there is in the record a letter purporting to be a confirmation of this cablegram (Plaintiff's Exhibit No. 9; R. 290). Giving full credence to it as a confirmation, the cablegram probably contained the following data:

"E-Y.O.B.C.
11/2/41
ADR

"EXHIBIT 9

HUA HSIN COMPANY

Telephone: 15914

320 Szechuen Road.

Shanghai, July 4th, 1941

"Messrs. China Import & Export Company
212 5th Ave. So.
Seattle, Washington,
U. S. A.

“Gentlemen :

“As a consequence of our long business discussion with your representative, Mr. W. L. Chang, we wish to open our most cordial business relation with your goodselves by our placing an order with you for three new storage tanks, which we have heard that you have in your hands as available stock, and we beg to confirm our today’s telegraphic order as follows, which we trust, could have been receiving your most careful attention at your end.

Article: New storage Tanks, capacity 80,000 Bbls. ea. Specifications and Blue-Prints as handed by Mr. Chang.

Quantity: 2 (three) complete sets with complete accessories and construction materials, such as welding rods and flux.

Price: CIF Shanghai U. S. \$29,500—per complete set.

Amount: U. S. \$88,500.—

Payment: Deduct U. S. \$71,700 from our credit account. Balance shall be remitted shortly. All particulars as per Mr. Chang’s letter.

Packing: Usual Export Custom.

Shipment: From Pacific Coast July/August 1941.

Destination: Shanghai, China.

“For your information, we might as well add here that these tanks are to be imported for the local storage purpose and will not be re-exported to any country with whom you are not on friendly terms.

“Thank you in anticipation for your kind at-

tention to the above, we beg to remain, Gentlemen,

Yours faithfully,

HUA HSIN COMPANY,

M. H. KIANGS

Manager."

(Ex. 9; R. 290)

While this letter of confirmation was never received by Takahashi (a circumstance to be more fully dwelt upon hereinafter), no doubt the data it contains, including the claimed credit of \$71,700, was contained in the cablegram ordering the tanks.

Takahashi noted this claimed credit, and knew at the same time that the credit had been wiped out in the settlement with Mikuni-Shoko Company. Nevertheless, he forwarded the application to Washington in order to have on hand the permission to ship in case something should happen whereby he got paid for the tanks. He explains fully and positively:

"Now, then, at the time you made the application to Washington, D. C., for these tanks to be shipped by the China Import & Export Company, did you have any order for any money or any letter of credit from Hua Hsin Company?"

"No sir, I did not. I did not need it.

"You were relying entirely, as a matter of fact, on the Mikuni-Shoko Company, weren't you?"

"Well, we don't worry in our import-export business, Mr. Dennis, because if a person does not send a letter of credit, even at the last minute, you don't have to load the goods, and as long as we have the goods we are not worried at all about finances.

"So you had no letter of credit at all from Hua Hsin Company?

"That is correct.

"You were not relying on the Mikuni-Shoko Company?

"If arrangements had been agreed upon, I would have waited for a letter of credit to come from China. If there hadn't been any letter of credit I wouldn't ship even if the license had been granted. I was not relying in any way on Mikuni-Shoko Company for the funds for the proposition from China. I would rely on them in this sense that they would have to recommend to us some firm of reliable financial standing."
(R. 199-200)

No order with cash or letter of credit ever came, and Takahashi began to look elsewhere for a sale of the tanks to save himself from a financial catastrophe. They were offered about to the American government, the British Buying Commission, Canadian government, parties in Mexico, and finally sold, in the United States, one to the Equipment Corporation of America, one to the Portland Gas & Coke Company and the third to the Shell Oil Company (R. 234).

After Osawa had adjusted the Takahashi business with Mikuni-Shoko Company and had closed the Takahashi office in Tokyo, he became marooned in Japan. He finished his business there two days after the last boat for Seattle had left in July. He took the next ship out, which landed him in Seattle on November 2 (R. 205). When the ship stopped at Victoria he wired Takahashi at Seattle to meet him upon arrival there with \$200.00 for use in paying custom duties

(R. 215). Takahashi met him with the money and also with him some letters he had received from Mikuni-Shoko Company of a compromising nature, to which he had never replied and for which he wanted an explanation "at the very earliest possible moment" (R. 185). Osawa, in leaving the boat inadvertently dropped a letter in the waste paper basket in his state-room, a letter indicating that he was not above smuggling into the country a few pairs (six to be exact) of silk stockings. This letter finding its way into the customs officials' hands resulted in both of them being searched at the dock. It was soon demonstrated that the stockings had been properly declared, but in making the search some embarrassing letters and documents upon both appellants were uncovered and seized.

As a petition to return these papers and to quash the indictment based thereon was subsequently made before trial by both appellants, considered and denied by the court, further details of this occurrence will be reserved until we come to consider the rulings of the court in that regard.

At the trial proper objections were interposed to the reception of these letters and documents in evidence, and exceptions taken to the court's ruling admitting same.

At the close of the government case, and again at the close of the entire case, a challenge to the sufficiency of the evidence to warrant submission of the case to the jury was interposed, overruled and exceptions preserved.

In the court's instructions to the jury the court

saw fit to comment upon some of the evidence, to which comment the appellants duly excepted. These comments require some six pages to set forth in the record, and a recitation of them will be postponed for printing in full until we come to treat of them as one of our assigned errors.

Each of appellants produced testimony of their good reputation in the community for uprightness of character and being law-abiding citizens, but the court in his instructions to the jury so commented thereon as to rob appellants of all value thereof, to which appellants duly excepted, and this instruction and comment, with exceptions, was preserved and will be later set forth in full.

The jury returned a verdict of guilty on all three counts, and after motions for new trial were interposed and denied, the court entered judgment and sentence, each appellant receiving sentence on the first count 2 years; second count 2 years; third count 5 years; the sentence on the last count to run concurrently with those on the first two.

Neither appellant is under commitment, but both are detained by the military authorities at a relocation camp near Twin Falls, Idaho.

STATEMENT OF POINTS RELIED UPON

Appellants duly filed an assignment of errors (R. 36), and gave notice that the following points would be relied upon on appeal (R. 421) :

(1) Denial of the separate petitions of appellants for the return of private papers forcibly taken from their persons, in violation of their rights under the Fourth and Fifth Amendments to the Constitution of the United States.

(2) Denial of appellants' motion to quash indictment. This motion was predicated upon the ground that the private papers so taken from appellants had been submitted by the United States District Attorney to the grand jury and had become the basis for the indictment, without which the District Attorney could not successfully prosecute the same.

(3) Admission in evidence, over appellants' objections of private papers and letters forcibly taken from their persons. Appellants contend that the use of such evidence by the Government in connection with their prosecution violated their rights under the Fourth and Fifth Amendments to the Constitution of the United States.

(4) Denial of motions made by the appellants, and each of them, to dismiss the indictment at the end of the Government's case, on the ground that the evidence was insufficient, as a matter of law, to sustain any count of the indictment, and the denial of their separate motions made at the close of all the evidence to dismiss and for direction of verdicts of not guilty on each and every count of the indictment.

(5) The trial court's charge to the jury exceeded the bounds of fair comment and was highly prejudicial in that it was a biased, unfair and one-sided analysis of the evidence, and was argumentative.

(6) The instruction which the court gave the jury concerning the evidence of appellants' good character and reputation was contrary to law, because it failed to tell the jury that if this evidence raised a reasonable doubt in their minds as to appellants' guilt they are entitled to the benefit of that doubt and the jury's verdict should, therefore, be not guilty. On the contrary, the instruction which the court gave, by direct statement, innuendo and suggestion, made good reputation of doubtful value and probably a positive disadvantage to appellants.

ARGUMENT

ASSIGNMENTS OF ERROR I, II, III, IV and V.

I. The court erred in denying the petition of Charles T. Takahashi for the return of private papers forcibly taken from his person, in violation of his rights under the Fourth and Fifth Amendments to the Constitution of the United States (R. 36).

II. The court erred in denying the petition of Edward Y. Osawa for the return of private papers forcibly taken from his person, in violation of his rights under the Fourth and Fifth Amendments to the Constitution of the United States (R. 36-37).

III. The court erred in denying the motion of the

defendants Charles T. Takahashi and Edward Y. Osawa to quash the indictment herein (R. 37).

IV. The court erred in admitting in evidence the papers taken from the person of appellant Takahashi (R. 37).

V. The court erred in admitting in evidence the papers taken from the person of appellant Osawa and from his brief case (R. 37).

As these five assignments grow out of one state of fact it is desirable, if not necessary, to discuss them together, based upon the following record:

Atherton's affidavit (R. 58) says that he took from Osawa:

- (1) A brief case containing various papers, including one letter from Hua Hsin Co., dated Shanghai, July 4, addressed to China Import & Export Company, 212 Fifth Avenue South, Seattle, and signed by M. H. Kiang, manager. That the letter contained a reference to the sum of \$71,700, etc.

that he took from Takahashi:

- (1) Telegram in code transmitted by Mikuni-Shoko Co. on or about June 27, 1941, at Tokyo, Japan, addressed to Takashashi & Co., Seattle.
- (2) Letter dated July, 1941, addressed by Edward Y. Osawa at Tokyo, Japan, to C. T. Takahashi.
- (3) Letter from Mikuni-Shoko Co. in confirmation of telegram addressed NEWYR.
- (4) Letter written by Edward Y. Osawa, dated July 15, 1941, at Tokyo, Japan, and sent to Charles T. Takahashi.
- (5) Letter dated July 16, 1941, written by M. Ikuto, Tokyo, Japan, to C. T. Takahashi & Co.

(6) Letter dated July 12, 1941, written by Edward Y. Osawa, Tokyo, Japan, and addressed to C. T. Takahashi, together with other papers.

(R. 61-62)

Richards' affidavit (R. 68) says that he took from Osawa:

(1) The same brief case, including the same letter, and that he took from Takahashi the same six items described by Atherton, and also adds, as Atherton did, together with other papers (R. 67-69).

The indictment recites all these seven items as overt acts. In addition it recites some fifteen other acts, most of which is made up of the sending and receiving various letters and telegrams, and we believe it is fair to presume that many of these items are covered by the "together with other papers" recited in both affidavits. No harm could possibly be done by so doing, for we read later in the evidence of Richards at the trial:

"Exhibits No. 11, No. 12, No. 13, No. 14, No. 15, No. 16, No. 17 and No. 18 are papers I took from Mr. Takahashi's pocket on November 2 on the pier." (R. 136)

(See also Atherton's affidavit, R. 161-162).

It is probably sufficient to make one definite instance of a proper record on the trial:

"MR. DENNIS: I offer these exhibits No. 10, No. 11, No. 12, No. 13, No. 14, No. 15, No. 16, No. 17 and No. 18.

MR. CRANDELL: To which the defendant C. T. Takahashi makes the basic objection.

MR. GRIFFIN: To which the defendant Osawa makes the basic objection.

THE COURT: No. 14, No. 15 and No. 16 * * * are admitted and the objections of Mr. Osawa are overruled. The objection of Mr. Takahashi is overruled.

MR. GRIFFIN: Exception.

MR. CRANDELL: Exception (R. 137-138)

THE COURT: The other exhibits, No. 10, No. 11, No. 12, No. 13, No. 17 and No. 18 are admitted in evidence. The objection of Mr. Takahashi is overruled.

MR. CRANDELL: Exception.

THE COURT: The objections of Mr. Osawa are overruled. The exception to each defendant and to each ruling as to each exhibit are allowed. I think I have covered all the offers. So there will be no question, Exhibits No. 10 to No. 18 inclusive are admitted in evidence and the objections are overruled and the exceptions allowed." (R. 137-138).

Exhibit 9, taken from Osawa's brief case, offered in evidence (R. 161):

"To which defendant Osawa objects upon the basic objection heretofore made." (R. 161)

Ruling reserved (R. 161).

Again offered, same objection, and admitted (R. 215-216).

The record discloses that after the indictment was returned and before trial the appellant Takahashi filed in the cause his petition for the return of certain papers allegedly seized by Federal officers in violation of his rights under the Fourth and Fifth Amendments to the Federal Constitution. At the same time appellant Osawa filed a similar petition for the return of other papers taken from him at the

same time, in violation of his constitutional rights. And both appellants joined in a motion to quash the indictment herein because all said papers had been submitted to the grand jury and had become the basis of said indictment.

The government in opposing both petitions and the motion filed some seven or eight affidavits of Federal agents setting forth their doings in the premises at the time of the search, deemed by the government to show justification for the seizures.

A hearing was had upon the issues thus made, and the court denied both petitions and overruled the motion, to which rulings of the court the appellants excepted and their exceptions were allowed.

From the showing made by appellants and the counter-showing of the government the following facts appear, undisputed:

Appellant Charles T. Takahashi is the sole member and owner of the firm of C. T. Takahashi & Co., importers and exporters, Seattle, Washington. Appellant Edward Y. Osawa is his general manager. In the spring of 1941 Takahashi sent Osawa to Tokyo, Japan, upon an errand for the firm. Osawa returned on the boat HIKAWA MARU, which landed in Seattle on the morning of the following November 2.

On this return trip Osawa wired Takahashi from Victoria to meet him at the boat in Seattle with \$200.00, wanted to pay custom duties, if any required, and Takahashi was at the dock when he arrived.

Upon debarking, Osawa in common with the other

passengers was herded by the Custom officials into the enclosure set apart for incoming passengers preparatory to clearing their baggage from customs duties; and Takahashi "tagged" along into the enclosure.

While the routine business of clearing the passengers' baggage was going on in the enclosure government agents were busy elsewhere. One J. W. Stanton, an inspector in the Bureau of Entimology and Plant Quarantine, pursuant to his duties was searching state-rooms on the HIKAWA MARU for plants, fruits and insect life, and in a waste paper basket in the state-room recently vacated by Osawa he found a letter in an opened envelope, which upon reading incited a suspicion in his mind that some six pairs of silk stockings might be in process of being smuggled into the country by Osawa. A photostat of this letter was attached to his affidavit filed as a part of the counter-showing, marked "Exhibit A," and as it appears some five times in the counter-showing we reproduce it in the Transcript of Record, once for all, at page 64.

In line of duty Stanton delivered this letter to Customs Inspector A. J. Frankel (R. 70). Mr. Frankel turned it over to Chief Inspector of Customs A. H. Koons (R. 72). Mr. Koons gave it to Customs Agent A. D. Richards (R. 74). Mr. Richards then showed it to Customs Agent A. S. Atherton (R. 60), and the two together, Richards and Atherton went hunting for Osawa. They soon spotted him and Takahashi. The two were going about in the passengers' enclosure, frequently consulting, and passing a paper

between them, state their affidavits. (It subsequently developed that Osawa had brought with him some seven pieces of baggage, of which two were not visible and for which they were hunting, and the "paper" (reproduced at R. 81-87) was his copy of the Baggage Declaration and Entry, being used by the two in the search for the missing pieces). Everything being finally settled to their satisfaction Osawa and Takahashi started to leave the enclosure, when they were intercepted by officers Atherton and Richards, who required both of them to accompany them to the waiting room for search (R. 67).

From the waiting room they took Osawa alone into the washroom adjoining and searched him. They found no stockings or other smuggled merchandise, but they found upon his person a certain letter and in his brief case "various papers," which they seized and carried away with them (R. 67).

Having finished with Osawa, they then took Takahashi to the washroom and searched him. They found no stockings or other smuggled goods, but in his pockets they found an assortment of papers, some six of which are listed in their affidavits, and which they seized and carried away with them.

So far as the silk stockings are concerned, Osawa's declaration showed that the six pair referred to in the letter had been properly declared, and the government has long since ceased to talk about them.

From the foregoing recitation of facts, which are undisputed, let it be noted that, (a) no arrest was made; (b) no search warrant was possessed by the

officers; (c) no crime was being committed; (d) no proceedings against appellants were pending; (e) the papers seized had no connection with the purpose of the search; and (f) appellants were not even suspected of the crime or crimes with which they were later charged.

The seizure of any papers, under such circumstances, as evidence of some crime disconnected with the object of the search, and the subsequent use of such papers as evidence against the owners, is clearly an unreasonable search and seizure, and violates the owners' constitutional rights under the Fourth and Fifth Amendments to the Constitution of the United States.

Entick v. Carrington, 19 Howard St. Tr. 1029;
Boyd v. U. S., 116 U.S. 616, 6 S. Ct. 524, 29
 L. ed. 746;

Weeks v. U. S., 232 U.S. 383, 34 S. Ct. 341,
 58 L. ed. 652;

Gouled v. U. S., 255 U.S. 298, 41 S. Ct. 216,
 65 L. ed. 647;

Byars v. U. S., 273 U.S. 28, 47 S. Ct. 248, 71
 L. ed. 520;

Go-Bart Imp. Co. v. U. S., 282 U.S. 344, 51 S.
 Ct. 153, 75 L. ed. 374;

U. S. v. Lefkowitz, 285 U.S., 452, 52 S. Ct. 420.

This principle has been enunciated so many times that it has become practically axiomatic, and it is nothing short of amazing that the government at this late day should take some odds and ends of papers thus seized, and with the use of leads thus obtained piece them in with other papers and records later

found at the Takahashi office, and then submit the "case" to the Grand Jury as the basis of an indictment!

Counsel for the government attempt to justify the legality of this search and seizure upon the ground that Osawa, being an incoming passenger from a foreign port was subject to search for dutiable goods without a search warrant; and that Takahashi, having followed Osawa into the passengers' enclosure, rendered himself amenable to the same right of search; and that having the right of search, the officers had the right to seize any evidence they found which they deemed pointed to crime, any crime, whether the crime pointed at was the crime actuating the search, or some other crime.

To make the issue clear, let it be said appellants do not question the right of the Customs officers on this occasion to search either or both Osawa or Takahashi, so long as the search was directed at uncovering smuggled goods. But we do maintain that though the officers had the right to search for smuggled goods, they were limited in their search *to* smuggled goods, and that this right of search ended when their search for smuggled goods ended; that if their search uncovered evidence of matters unrelated to smuggled goods it was unlawful for them to seize such evidence, just as it would have been unlawful had they possessed a valid search warrant and had gone beyond the directions of the warrant and seized property not covered thereby.

Let it be kept in mind that there is no such thing known to Anglo-American law as a valid search, at

any time, or at any place, or under any circumstances, for papers to be used as evidence against an accused. Even a search warrant, issued with all the formalities of law, will not avail for *that* purpose.

Entick v. Carrington, 19 Howard St. Tr. 1029.

This is the famous case which has become a part of the unwritten constitution of England and from which stems the Fourth Amendment to our Constitution and all our search and seizure law, and in which Lord Camden said:

“Lastly, it is urged as an argument of utility, that such a search” (general warrants for search and seizure of papers for evidence) “is a means of detecting offenders by discovering evidence. I wish some cases had been shown, where the law forceth evidence out of the owner’s custody by process. There is no process against papers in civil causes. It has been often tried but never prevailed. Nay, where the adversary has by force or fraud got possession of your own proper evidence, there is no way to get it back but by action. In the criminal law such a proceeding was never heard of; and yet there are some crimes, such, for instance as murder, rape, robbery and house breaking, to say nothing of forgery and perjury, that are more atrocious than libeling.” (the cause of action pending). “But our law has provided no paper search in these cases to help forward the conviction. Whether this proceedeth from the gentleness of the law towards criminals, or from a consideration that such a power would be more pernicious to the innocent than useful to the public, I will not say. It is very certain that the law obligeth no man to accuse himself; because the necessary means of compelling self accusa-

tion, falling upon the innocent as well as the guilty, would be both cruel and unjust; and it would seem that search for evidence is disallowed upon the same principle. Then, too, the innocent would be confounded with the guilty.”

After a few further observations, his Lordship concluded:

“I have now taken notice of everything that has been urged upon the present point; and upon the whole we are all of the opinion that the warrant to seize and carry away the party’s papers in the case of a seditious libel is illegal and void.”

This quotation is taken from the case of *Boyd v. U. S.*, 116 U.S. 616, 629, 6 S. Ct. 524, 531, 29 L. ed. 746, 750, itself a celebrated case, much quoted, where the Supreme Court says the Fourth Amendment was framed with the *Entick* case in mind, and which was “considered as sufficiently explanatory of what was meant by unreasonable searches and seizures.” See also *Weeks v. U. S.*, 232 U.S. 383, 34 S. Ct. 341, 58 L. ed. 653.

“* * * They (search warrants) may not be used as a means of gaining access to a man’s house or office and papers solely for the purpose of making search to secure evidence to be used against him in a criminal or penal proceeding * * *” (citing the *Boyd* case, above).

Gouled v. U. S., 255 U.S. 298, 41 S. Ct. 261, 65 L. ed. 647, 652.

“Respondents’ papers were wanted by the officers solely for uses as evidence of crime of which respondents were accused or suspected. They could not lawfully be searched for and taken even under a search warrant issued upon

ample evidence and precisely describing such things and disclosing exactly where they were. *Gouled v. U. S.*, 255 U.S. 298, 41 Sup. Ct. 261, 65 L. ed. 647.”

U. S. v. Lefkowitz, 285 U.S. 452, 52 S. Ct. 420, 76 L. ed. 877.

“It is not every kind of property that may be seized under a search warrant. It is intended that the warrant be issued with the privilege to seize such property as was used as the means of committing a felony. All papers and documents which afford evidence that a felony has been committed but which were not the means of committing it, are immune from seizure. *Veeder v. U. S.*, 252 Fed. 414, 164 C.C.A. 338.”

In Re No. 191 Front Street (C.C.A. 2) 5 F.(2d) 282.

“The requirement that warrants particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken nothing is left to the discretion of the officer executing the warrant.”

Marron v. U. S., 275 U.S. 192, 48 S. Ct. 74, 72 L. ed. 231.

If this last were not true the Fourth Amendment would become a nullity. All that would be necessary in the future for a general search would be a stock form of affidavit relative to, say mail robbery, and a search warrant based thereon to be used on all occasions. The search of course would disclose nothing pertaining to mail robbery; but in rummaging about among the victim's effects evidence might be un-

covered relative to a violation of the Mann Act. If such evidence can then become the basis of an indictment, it is folly to decry longer against the evils of general searches, at which the Fourth Amendment was aimed.

It is clear then that had the Customs officers possessed a search warrant for silk stockings, they could not in the execution of it have seized what they did seize. Were their rights greater without one?

We doubt if counsel for respondent will challenge anything we have said thus far. If they pursue the same course here that they did in the lower court they will base the actions of the Customs officials upon other considerations than the whereabouts of six pair of silk stockings. The showing made in the affidavits of Customs Officers Atherton and Richards furnishes the key.

It is alleged in the affidavit of Mr. Atherton that about October 15, 1941 (18 days before the search), he, as a United States *Customs Agent*, received instructions from the Bureau of Customs to investigate appellant C. T. Takahashi as a suspected violator of the *Foreign Funds Control Act*; and that he had commenced this investigation the latter part of that month; that he was at the dock when the HIKAWA MARU arrived (he doesn't say whether as a Customs Agent, or as the guardian of the Foreign Funds Control Act); that he saw Osawa and Takahashi there; that he didn't know either, but they were pointed out to him by another officer, who volunteered their names and that one was manager for the other; that both were in the passengers' enclosure, and that he (wit-

ness) knew Takahashi did not belong there; that he saw Osawa with a paper in his hand; that he (witness) had been shown the letter, Exhibit A, and that the contents of that letter, plus the close contact of Osawa and Takahashi, plus the fact that Takahashi did not belong in the enclosure, led to the belief in the mind of the witness that "a plan was afoot in his presence to violate the laws of the United States, and that Takahashi was as liable to suspicion as Osawa;" (he does not indicate what law, whether the Customs laws or the Foreign Funds Control Act); that he and Customs Officer Richards detained both men as they were leaving the enclosure, and after exhibiting the badge of a *Customs Agent* directed them to enter the adjoining waiting room for search; from the waiting room they took first Osawa into the wash-room and searched him; that in this search they discovered a letter (describing it) which they took and held "as an instrumentality of the crime of violating the Foreign Funds Control Act;" and that they seized other papers "as bearing on and contributing to the transaction described in the letter;" that they searched Takahashi and seized from his person a further lot of papers, some six of which are described in the witness' affidavit.

From the affidavit of Mr. Richards we learn that he, too, though a Customs Agent, had received instructions about October 15, 1941, from the Bureau of Customs to investigate Takahashi as a suspected violator of the *Foreign Funds Control Act*, and had commenced this investigation the latter part of that month. His affidavit then follows the affidavit of Mr.

Atherton *verbatim*. He saw the same acts, was moved by the same thoughts, drew the same conclusions, had the same belief that a plan was afoot in his presence to violate the laws of the United States, and finally seized the same letter "as an instrumentality of crime," and the other papers "as bearing on and contributing to the same transaction."

There we have the key. The search is to be justified upon a state of crime being committed in the presence of the officer, and the paper seized is to become, not *evidence* of crime, but an *instrumentality* of crime; thus bringing, or attempting to bring, the case within the purview of cases of that character.

Then let's analyze this showing a little more closely, to learn what kind of a search it was, for, as said by Mr. Justice Bradley in the *Boyd* case, "the search for and seizure of stolen or forfeited goods, or *goods liable to duties and concealed to avoid the payment thereof*, are totally different things from a search for and seizure of a man's private books and papers for the purpose of obtaining information therein contained, or of using them as evidence against him. In the one case the government is entitled to the possession of the property; in the other it is not." (*Boyd v. U. S.*, 116 U.S. 616, 623, 6 S. Ct. 524, 528, 29 L. ed. 746, 748). If it was a search for "goods liable to duties and concealed to avoid payment thereof" (whether silk stockings or any other merchandise), we have already conceded the right of search on this occasion, of both men, contending only that the right is limited to a search for smuggled goods, and ends when the search for smuggled goods ends. So let's see whether

it was anything more than a search for "goods liable to duties and concealed to avoid the payment thereof."

The showing itself has a peculiar ring to it. We have no evidence that either officer did *not* have instructions to investigate Takahashi as a violator of the Foreign Fund Control Act, as they testified they had, but it comes as a surprise to us to learn that that Act comes within the domain of the Customs Department. The officers were at the dock that morning, but they were not there with Osawa or Takahashi in mind, as violators of the Foreign Fund Control Act or any other Act, for they knew neither of them. The officers may have had a double side to their character that morning, but it was the Customs side that the silk stockings appealed to and moved them into action. If they got a belief in their mind that "a plan was afoot in their presence to violate the laws of the United States," as they say they did, it was the Customs laws and was engendered by Exhibit A, for they had not yet seen the papers that they later seized. Exhibit A was the only paper they had seen before the search which uncovered the papers seized. In fact, they tell us it was the badge of a *Customs Officer* which they exhibited to the two men as their authority in directing them into the waiting room for search. Then why pretend that they were acting as anything but Customs men and that the search was anything but a search for smuggled goods?

Even government counsel was not impressed with the showing of these two officers, for when he came to study his case he concluded that it was not the *Foreign Funds Control Act* at all which was being violated,

and which had so strongly moved the Customs officers, but a Presidential order promulgated pursuant to Sec. 99 of Title 50 U.S.C.A., instead! (See indictment).

When the Customs officers found the silk stockings properly declared that should have ended the matter. Going farther was going beyond the law, and what was uncovered avails nothing as evidence.

“Nor is it material that the search was successful in revealing evidence of a violation of a Federal statute. A search prosecuted in violation of the Constitution is not made lawful by what it brings to light; and the doctrine has never been recognized by this court, nor can it be tolerated under our constitutional system, that evidences of crime discovered by a Federal Officer in making a search without lawful warrant may be used against the victim of the unlawful search where a timely challenge has been interposed. (Citing 5 previous cases among Supreme Court decisions).”

Byars v. U. S., 273 U.S. 28, 47 S. Ct. 248,
71 L. ed. 520.

It was clearly an unreasonable search and seizure, and comes within the inhibitions of the Fourth Amendment.

The petitions, both of them, should have been granted. But though denied, the motion to quash the indictment because the evidence so acquired was laid before the Grand Jury in violation of appellants' rights under the Fifth Amendment, should have been sustained. That the evidence was so used is shown conclusively by comparing the list of papers, recited in the affidavits of both Atherton and Richards, with

the overt acts alleged in the indictment. They are identical.

And if what we have said so far holds good, then the rights of appellants were further infringed by the use of the tainted evidence upon the trial, over proper objections and exceptions reserved.

It is well settled that, when properly invoked, the Fifth Amendment protects every person from incrimination by the use of evidence obtained through search or seizure made in violation of his rights under the Fourth Amendment. *Boyd v. United States, supra* (116 U.S. 616), 630, *et seq.*; *Weeks v. United States, supra* (232 U.S. 383), 398; *Silverthorne Lumber Co. v. United States, supra* (251 U.S. 385), 391, 392; *Gouled v. United States, supra* (255 U.S. 298), 306; *Amos v. United States, supra* 255 U.S. 313, 316.

ASSIGNMENTS OF ERROR VI and VII.

VI. The court erred in denying the motion made on behalf of the defendants, and each of them, to dismiss the indictment at the end of the Government's case, on the ground that the evidence was insufficient, as a matter of law, to sustain any count in the indictment (R. 37).

VII. The court erred in denying the motion made by the defendants, and each of them, at the close of all the evidence to dismiss the indictment and for a direction of verdict of not guilty on each and every count of the indictment (R. 38).

Let us keep well in mind the issues in this case.

The gist of the charges in all the counts was the filing in Washington of the application for permission

to ship the three tanks (Government's Exhibit No. 9), in which application it was stated the destination of the tanks was China, whereas it is alleged in all three counts of the indictment the ultimate destination was Japan; which, if true, was a violation of Section 6 of the Presidential order heretofore printed in full; and was also a violation of Section 80, Title 18, U.S.C.A., pertaining to the making of untrue statements in any matter pending before a department in Washington.

Count 1 of the indictment charges all five defendants with a conspiracy to file this application;

Count 2 charges that the filing violated this Presidential order;

Count 3 charges that the same act of filing was also a violation of Section 80, Title 18, U.S.C.A.

And to appreciate the argument to follow, the court must fully understand that Takahashi & Company and the other Takahashi company, "China Import & Export Company," once closed their relations with Mikuni-Shoko Company. When they repaid to them the moneys received as advance payment on the tanks, and the freight too, and closed the Takahashi office in Tokyo they were through not only with Mikuni-Shoko Company but with Japan as well, though Osawa was marooned there for want of a boat to get away. And, by the same token, Mikuni-Shoko Company was shorn of all interest in the tanks which now belonged to Takahashi & Company and were subsequently sold by them in this country.

But after once closing out their interest in the matter Mikuni-Shoko Company attempted to back in

again, and it is matters which occurred subsequent to the final settlement that furnishes the Government with cause to think that the tanks were destined to Japan and with an opportunity to flaunt in our faces and in the faces of the court some three letters which, indeed, tend to so indicate and which are unquestionably compromising of appellants if they are to be given face value. But appellants claim they are not what they appear to be on their face and are not binding upon them, and in any event that they have no effect whatever upon the issues because they had, and could have had, no influence upon the filing of the application.

After Mikuni-Shoko Company had provided the Takahashi representative in Shanghai, and Osawa had made the unhappy suggestion, "Why not offer these tanks which we have as a starter for our connection in Shanghai," Mikuni-Shoko Company apparently had an afterthought. At any rate they soon proposed to Osawa to establish a new credit upon the tanks. They wanted to trade back yen for dollars and with the proceeds grant a new credit. Osawa tells of this in one of his letters and also so testified on the witness stand but says "I would not stand for that" (R. 216-217).

Notwithstanding this rebuff, along came the cablegram from Hua Hsin Company in Shanghai ordering the tanks to be shipped to them. It is perfectly apparent the order was inspired by Mikuni-Shoko Company. The data it contained could have been supplied by no one else. It is equally apparent that Hua Hsin Company bound themselves in no manner by the order.

If accepted by Takahashi at all it would have to be accepted in toto and there stood a claimed credit of \$71,700.00. Paraphrasing the order read, "Ship us our tanks for which you have already been paid." Under these circumstances Hua Hsin Company were bound to nothing and could only be serving Mikuni-Shoko Company.

Takahashi saw all this to be sure and in the face of it filed the application. He had the tanks on his hands and was hopeful of selling them and made the filing in order to have on hand the permission to ship in case payment for them should materialize.

This act of filing constitutes a completion of the crime in all three counts—if any at all were committed—and makes anything occurring subsequently wholly immaterial to the issues.

Now let us consider the letters. The first one purports to be a confirmation of the cablegram ordering the tanks, with some additions. It is dated July 4. It is signed Hua Hsin Company by M. H. Kiang, one of the defendants, and is addressed to China Import & Export Company at Seattle, but it was never mailed to them or received by them. Osawa explained its existence in this wise: It was handed to him in Tokyo by Mikuni-Shoko Company, who apparently had gotten it from Hua Hsin Company in Shanghai. Noting the credit claimed in it, Osawa protested that all such credit had been wiped out, whereupon Mikuni-Shoko Company said that "they would get him a new contract." The letter then being so void of effect, Osawa did not bother to send it to Takahashi, but filed it away in his brief case. It remained there un-

til his arrival on the dock in Seattle several months later when Customs officers discovered it there and seized it while searching for silk stockings. Both Customs agents, Richards and Atherton, in their affidavits resisting the petition to return it to Osawa admitted it was so found. Indeed it was this very letter that inspired them with the thought that "a crime was being committed in their presence." And the Government pleads it in the indictment overt act No. 20 as a letter Osawa had in his possession on November 2 (the day of the search).

If all this is true it could have had no influence upon Takahashi when he filed the application three months before.

Next come the two letters, Exhibits 17 and 18.

They are long and will not be quoted here. On their face, they are compromising in the extreme, and were sufficient to carry the case to the jury if we can not dispose of them here as we have with Exhibit 9.

Osawa never saw the letters until a day or two before the first trial (R. 220). They had been written by Mikuni-Shoko Company and mailed over his head to Takahashi & Company in Seattle.

They are dated July 16, and received by Takahashi some time in August. July 16 is the date of the application filed in Washington. They could not, therefore, have reached Takahashi in time to influence him in any manner in filing the application, and whatever else we may think of them they were irrelevant to the issues.

That is all that need be said of them. Nevertheless,

we would like to record that Takahashi says he never answered the letters. He didn't understand them and that is the reason he had them on his person when he went to the dock to meet Osawa. He testified:

“A I wanted to discuss them with Mr. Osawa at the very earliest possible moment. The interpretation that I made of it here was absolutely contrary to the policy of my firm. I had not answered the letters up to that time and never have answered them and have never since had any correspondence with the Tokyo company.”
(R. 185)

With the evidence showing this state of facts where was a case to go to the jury? Where was any conspiracy? Who agreed with whom? Where was the meeting of minds? What was the end to be accomplished by two or more acting in concert?

The Government had no evidence of its own to offer. It was dependent entirely upon such papers as they took upon the search and seizure and those subsequently furnished them voluntarily by appellants, to which they added such conclusions as best fitted their desire to injure a couple of Japanese they arrested the day after Pearl Harbor (R. 213).

Had the defendants in the Orient been on trial we would not contend that the case should not have gone to the jury as to them. The appellants never met any of Hua Hsin Company and never had any communication with any of them other than receiving the order for the tanks. But we feel as between them, Mikuni-Shoko Company and Hua Hsin Company, there were some machinations going on behind the

backs of appellants which could not stand up under fire, even though we do not know what the arrangements were. It is enough to say that appellants were not drawn into them.

Could we have impressed upon the trial court our desire that the issues, as we understand them, be kept fully in mind, we think this case would not be troubling this court now. But, we feel, he was too much preoccupied with what he considered was the honesty or dishonesty of these letters and anyone whose name appeared therein. This thought will be developed more fully when we come to consider our exceptions to his comments upon the evidence before the jury and what we say there might well be considered by this court as addenda here.

ASSIGNMENT OF ERROR VIII.

VIII. The court erred in instructing the jury, because the charge exceeded the bounds of fair comment and was highly prejudicial in that it was a biased, unfair and one-sided analysis of the evidence, and was argumentative (R. 38-46).

This assignment is printed in full in the Appendix pursuant to Rule 24 (following page 50 hereof).

Because of the length of these comments, fraught as they are with so many temptations to argue the accuracy of the facts touched upon by the court, it is not feasible to point out in detail each and every objection to it. Some general observations will have to suffice.

In the first place, it is not clear what the learned court had in mind was the issue in this case when he was thus speaking. The dominant thought through-

out the remarks seems to be the "honesty" of someone or some thing; "honestly believed"; "honest order"; "honest letter"; "honest sale"; "honest transaction." Whereas, the issue in the case, in each and every count in the indictment, was whether, when Takahashi filed the application with the State Department for permission to ship the tanks to China, he intended to tranship them to Japan; or, that *he knew* that some one else with power so to do *intended to do so*. To decide that issue it was wholly unnecessary to insert another one about the honesty of any one or any thing. And it was particularly grievous to the appellants in this case to have to defend not alone their own honesty but the honesty of some one across the Pacific who they themselves felt had not been playing open and above board with appellants.

We do not deny the right of the court to comment upon the evidence, to sum it up, even to express his opinion upon the case, provided he makes it clear to the jury that after all they are the judges of the facts. But we do maintain that, if he ventures into the field at all, he must be fair and impartial; that if he states one side he must state the other; that he must not be argumentative; and that he must not become an advocate.

Says the Supreme Court of the United States:

"In a trial by jury in a Federal court the judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct and of determining questions of law."

And in the course of discussing the function of the

trial judge at common law it quoted Sir Mathew Hale as follows:

“Herein he is able, in matters of law emerging upon the evidence, to direct them; and also, in matters of fact to give them a great light and assistance by his weighing the evidence before them and *observing where the question and knot of the business lies*, and by showing them his opinion even in matters of fact; which is a great advantage and light to laymen.” (Italics supplied)

But, continues the court:

“This privilege of the judge to comment on the facts has its inherent limitations. His discretion is not arbitrary and uncontrolled, but judicial, to be exercised in conformity with the standards governing the judicial office. In commenting upon testimony he may not assume the role of a witness. He may analyze and dissect the evidence, but he may not either distort it or add to it. His privilege of comment in order to give appropriate assistance to the jury is too important to be left without safeguards against abuses. The influence of the trial judge on the jury ‘is necessarily and properly of great weight’ and ‘his lightest word or intimation is received with deference, and may prove controlling’.”

Quercia v. U. S., 289 U.S. 466, 698 S. Ct. 698, 77 L. ed. 1321.

Says the Circuit Court of Appeals for the Tenth Circuit, upon the subject under discussion:

“But in summing up and commenting on the evidence, the trial judge should be governed by certain well recognized limitations inherent in the very nature of the judicial office. He should

state the evidence fairly and accurately, *both that which is favorable and that which is unfavorable to the accused. His statements should not be argumentative, but impartial, dispassionate, and judicial; and they should be so carefully guarded that the jurors are left free to exercise their independent judgment upon the facts.*" (Italics ours)

Minner v. U. S., 57 F.(2d) 506, 513.

The Circuit Court of Appeals for the Eighth Circuit comments on the same subject thus:

"In a criminal case in a Federal court, the trial judge has the power to superintend and direct the trial, to review the evidence, and to advise on the facts, but this power must not be abused. If the testimony is summed up or analyzed, care must be taken to sum up and analyze both sides, and the judge must not become an advocate."

Boatright v. U. S., 105 F.(2d) 737, 739.

And again:

"While the judge in the federal courts 'may comment on the evidence and may express his opinion on the facts, provided he clearly leaves to the jury the decision of fact questions' (*Weare v. United States*, 1 F.(2d) 617 (C.C.A. 8) and cases cited), yet, as was said in the same case, 'the instructions, however, should not be argumentative. The court cannot direct a verdict of guilty in criminal cases, even if the facts are undisputed. *Dillon v. United States* (C.C.A.) 279 Fed. 639. It should not be permitted to do indirectly what it can not do directly, and by its instructions to in effect argue the jury into a verdict of guilty.' See, also *Parker v. United*

States, 2 F.(2d) 710; *Cook v. United States* (C.C.A. 8) 18 F.(2d) 50.”

Sunderland v. United States, 19 F.(2d) 202, 216.

There are other Federal cases to the same effect, and the three cited name some of them. But it is not necessary to go afield for our authority. This court is in line with the cases cited. See:

Pincolini v. U. S., 295 Fed. 468;

Carney v. U. S., 295 Fed. 606;

Williams v. U. S., 93 F.(2d) 685.

In the *Williams* case the exception to the charge was, that the court “erred in commenting upon the evidence * * * in that the comments amounted to an act of advocacy on the part of the court in favor of the prosecution, and in the said comments none of the evidence favorable to the defendants was stated;” which exception drew forth from this court a discussion that is decisive of the case here. Among other things this court said:

“A federal judge need not summarize the evidence at all. But if he undertakes to do so, the summary must be fair and adequate. The authorities are agreed that it must not be one-sided.”

But the remarks complained about can not be termed a “summing up.” An “argument” best describes them; an argument, too, *for conviction*. This is shown the more clearly when we consider the last instruction of the court which preceded the matter complained of. He said:

“You are not bound or controlled at all by any

bold statement any witness may make. And you are not bound or controlled at all by any bold statement any defendant may have made. * * * And if any witness, whether defendant or not, makes any statement which you find to be unreasonable in the light of the testimony and in the light of the reasonable inferences to be drawn from the testimony, then you may disregard such statements, *even though there is no other witness who is able to testify to the contrary.*" (R. 271)

This instruction was but introductory to the remarks complained about. And the "bold statements" referred no doubt to the evidence given by the appellants, who had denied categorically that when the tanks were incorporated in the application for permission to ship to China they were in fact destined for Japan. They could have referred to nothing else, and the court by this instruction, followed by his argument — or comment, if you please — not only stripped the appellants of their defense, but even of their right to have it considered.

This was prejudicial in the extreme.

ASSIGNMENT OF ERROR IX.

IX. The court erred in instructing the jury upon the question of good reputation, evidence of which had been introduced upon the trial (R. 46-48).

This assignment is printed in full in the Appendix hereto, page 9A, pursuant to Rule 24.

As the court did not give the second instruction *in lieu* of the first, but distinctly said it was "*in addition* to what I have said," we have two instructions upon the same subject, and it is necessary to

consider them both. But first let us see what the true rule is as to the significance of that kind of evidence and the weight to be given it by the jury. A reference to an exhaustive note in 10 A.L.R., commencing at page 8 and continuing for more than 100 pages, indicates that while "good reputation" has always been considered competent evidence, what the probative effect thereof is has brought forth a considerable diversity of thought among the courts. However, it is believed that of late this thought has fairly crystalized, and may now be presented by reference to a limited number of cases. We start, as the modern cases do, with a decision from the Supreme Court of the United States:

"It is impossible, we think, to read the charge without preceiving that the leading thought in the mind of the learned judge was that evidence of good character could only be considered if the rest of the evidence created a doubt of defendant's guilt. * * * Whatever may have been said in some of the earlier cases, to the effect that evidence of the good character of the defendant is not to be considered unless the other evidence leaves the mind in doubt, the decided weight of authority now is that good character, when considered in connection with the other evidence in the case, may generate a reasonable doubt. The circumstances may be such that an established reputation for good character, if it is relevant to the issue, would alone create a reasonable doubt, although without it the other evidence would be convincing."

Edington v. U. S., 164 U.S. 361, 17 S. Ct. 72, 41 L. ed. 467.

The Circuit Court of Appeals for the Eighth Circuit has had the question before it in a couple of comparatively recent cases:

“Where evidence of defendant’s good character is introduced on defendant’s behalf, he is entitled, especially if request is made, to instruction that purpose and function of such evidence is to generate a reasonable doubt of defendant’s guilt, regardless of whether other evidence in the case be clear or doubtful, and that, if reasonable doubt is created thereby, when considered with other evidence, he is entitled to acquittal.” Syllabus from

Sunderland v. U. S., 19 F.(2d) 203.

“The rule was and is that, where evidence of good character is introduced in behalf of a defendant, he is entitled, and especially when a request is made, to an instruction to the effect (1) that the purpose and function of such evidence is to raise a reasonable doubt; (2) that it is entitled to be considered whether the effect of the other evidence in the case is clear or doubtful; and (3) that when it is considered with the other evidence, if a reasonable doubt is created as to the defendant’s guilt, he is entitled to be acquitted.”

Salinger v. U. S., 23 F.(2d) 48, at 53.

The Circuit Court of Appeals for the Second Circuit, after exhaustive search for the true rule in each Circuit, has this to say:

“We understand the rule to be that the jury are to consider all the evidence in the case, including that of good character, and when so considered the evidence of good character may be sufficient to give rise to a reasonable doubt

justifying a verdict of acquittal, when without it the other evidence in the case would be convincing of defendant's guilt. This is not only the rule in this Circuit, but also in the Third, Fifth, Eighth, and *Ninth* Circuits. In the Sixth and Seventh Circuits and in the District of Columbia a contrary view is taken."

Kreiner v. U. S., 11 F.(2d) 722, 726.

Though that Court commits this Court, among other Circuits, as to the rule established, and reviews some twelve or fifteen cases, we frankly state we have been unable to put our hands upon the case from this court which that court relied upon as its authority. However, this court had the same question before it in a case decided some time *after* the *Kreiner case* (*Baugh v. U. S.*, 27 F.(2d) 257), and while not so exhaustive in its treatment of the question as some of the other circuits it cites the *Kreiner case* as an authority for its own views, which puts the two circuits in harmony, and makes the quotation from the *Kreiner case* binding upon this court upon the point under discussion, if it was not before.

For a recent and able discussion of the cases since *Edington v. U. S.*, with an analysis and citation of numerous Circuit Courts of Appeals cases (including *Baugh v. U. S.* by this court), see *U. S. v. Dewinsky*, 41 F. Supp. 149 (Judge Goodrich, District Court, District of New Jersey).

Now let us look at the trial court's instructions in the light of the true rule thus found. First, as to the instruction given before exceptions taken.

It is to be first noted that the court, while recognizing evidence of good character to be competent evi-

dence, and telling the jury they were "to give it that weight as you believe it entitled to receive," it failed to enlighten them as to the office and probative value of such evidence; in other words, it failed to furnish the jury with any legal scales with which to weigh it. Stated as the court stated it, and without such scales, left the jury the judges of the law, instead of the court; and if they were to give the evidence "such weight as they believed it entitled to receive," without further guide, the jury may well have thought they were permitted to ignore it entirely.

Then, after treating the evidence in such casual manner, the court went on to say, "But the jury will recognize" that many men have been convicted of crime who previously had borne good reputations. Preceded as it was by the word "but," a sign of subtraction from or limitation of a previous statement, this injunction robbed the evidence of good reputation of all value whatever to appellants. Speaking of a similar case, where a lower court had said, "But I want to say to you that evidence of this nature should be taken with a great deal of caution, for a man may bear the very best of reputation and yet may secretly indulge in vice and crime. We often hear of cases * * *," the Circuit Court of Appeals for the Eighth Circuit said:

"The latter part of the foregoing excerpt (commencing with the words 'But I want to say to you') contains, in our opinion, prejudicial error. By direct statement, innuendo, and suggestion, it in effect nullified the true rule as first stated, and made good reputation of doubtful

value and probably a positive disadvantage to the defendant. Because of the generally accepted proposition that one of good reputation is less likely to commit crime than one of bad reputation, it has become appropriate and common for courts to charge the jury that good reputation, if proven, is a fact to be considered by the jury together with all the other facts and circumstances of the case, in reaching the ultimate conclusion of guilt or innocence. A statement of this brief kind, without elaboration, is, in our opinion, about all that can be profitably or safely said to a jury on the subject."

Perara v. U. S., 235 Fed. 515, 149 C.C.A. 61.

Finally, the court said, "if you are convinced beyond a reasonable doubt that the defendants or either of them, by the evidence, are guilty of the three counts or any of them, it is your duty and obligation to find said defendants or such one guilty, regardless of how good their reputation may have been." That is clearly not the rule, for, as we have just shown, evidence of good reputation can not be thus ignored.

We come now to consider the second instruction on the same subject. As said before, the court did not give the second *in lieu* of the first; it was stated rather to be "*in addition* to what I have said." And what he proceeded to say in the second did not qualify in any manner what he had previously said in the first. That left the first intact, with all its faults.

The second but made matters worse. Frankly, we believe the court had in mind to make evidence of good reputation a part of the case to be considered by the jury along with the other evidence in the case. But

the words chosen for the purpose were so inept that the jury could not have so understood them. At any rate, the last portion of the instruction cancelled out all merit in the court's good intention, for he plainly told the jury to use the evidence of good reputation if, and only if, it caused the jury to believe the defendants to be *not guilty*. That is indefensible. A defendant has never been required to prove himself not guilty in order to gain acquittal. He is entitled to an acquittal if only a reasonable doubt of his guilt exists in the mind of the jury. And good reputation, in conjunction with the other evidence, *may* generate such reasonable doubt, as we have heretofore shown.

Evidence of good character is of especial value to the appellants in this case, where the element of intent is so vital, and the denial of a proper instruction on the subject is such prejudicial error that this assignment alone would require reversal.

From the foregoing discussion of the facts and the law applicable thereto, and based upon the manifest errors of the trial court, we respectfully submit that the decision of the trial court must be reversed and remanded, with instructions to dismiss the action, or in the alternative, to grant appellants a new trial.

Respectfully submitted,

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APPENDIX

ASSIGNMENT OF ERROR VIII.

(R. 38-46)

VIII. The court erred in instructing the jury, because the following portions of the charge exceeded the bounds of fair comment and was highly prejudicial in that it was a biased, unfair and one-sided analysis of the evidence, and was argumentative:

“In this case it is my recollection that Mr. Osawa testified that while he was in Tokyo, Japan, exhibit 9—which he says he brought with him from Tokyo, Japan, to Seattle on November 2nd—was handed to him by someone, from Mikuni-Shoko Company Limited of Tokyo, Japan. He says that he received that letter, as I remember it. That letter recites from the beginning, quote—it is addressed to ‘Messrs. China Import and Export Company. As a consequence of our long business discussion with your representative, Mr. W. L. Chang, we wish—’. Now, in the light of all of the evidence of this case, if you believe that Mr. Osawa honestly believed that Mr. W. L. Chang was the business representative of the China Import and Export Company; in the light of all of the evidence that you have heard, do you believe that Mr. Osawa believed the statement in the last of that letter that the tanks were imported for local storage purposes in Shanghai?

“In connection with that letter and in connection with all of the evidence in the case, if Mr. Osawa believed that the letter of July 4, 1941, signed by Hua Hsin Company was an honest order for the shipment of these tanks to Shanghai, do you reasonably think that he would have writ-

ten on July 15 to Mr. Takahashi to this effect: 'We sure are on a spot on the three tanks. I doubt if a day goes by that they don't call us or say something about them. If we could only get those three tanks out it would be a life saver and they would do almost anything for us.'

"And you are entitled in the light of your experience and your common sense to determine if Mr. Osawa honestly believed that the Hua Hsin Company was purchasing these tanks, if he wouldn't have made a statement in this communication to Mr. Takahashi to the effect that he was not willing to approve the credit account of \$71,-700 claimed in the Hua Hsin Company.

"And you have a right in the light of all of the testimony to determine whether or not Mr. Osawa thought any portion of that letter of July 14, 1941, was an honest letter.

"As I remember the testimony, Mr. Osawa testified that while this plaintiff's exhibit 9 was brought to him by someone from the Miconi Shoko Company, that he never saw either of the letters I would like to find exhibit 17—dated July 16, 1941, addressed by Miconi-Shoko Company Limited of Tokyo, Japan, also to Seattle, Washington, but to the name Takahashi, instead of Chinese Import Company.

"In the light of all of the evidence that you have heard in this case and of the exhibits, do you believe that if the Mikuni-Shoko Company would take to Mr. Osawa this exhibit 9, instead of mailing it to the China Import Company at Seattle, that they wouldn't also take to Mr. Osawa exhibits 17 and 18? If you read exhibits 17 and 18, as I know you will, it will be for you to determine whether or not those two letters do not

show that it was the plan of the Mikuni-Shoko Company Limited or of Mr. Ikuta, its director, to merely use the Hua Hsin Company as a pretense.

“It will be for you to determine if the Mikuni-Shoko Company wished Mr. Osawa to have the one letter, why they wouldn't want him to have the other two letters.

“It is also for you to consider in the evidence—I would like to see the telegraph exhibits 10 to 13, inclusive—it is also for you to consider, in the light of all of the evidence, whether a business man of the experience of Mr. Takahashi, receiving these telegrams, under date of June 27 in code due and private, under date of June 28th in code duo, and under date of July 5th under code duo, code inverted and under date of July 8, 1941, under code duo, without realizing what the purpose of Mikuni-Shoko Company was, as you find from the evidence in the light of exhibits 17 and 18.

“Do you think it is reasonable that if a man with the experience of Mr. Takahashi, under date of June 27th, received a telegram from a company in Tokyo, which included this language, ‘Do utmost to arrange earliest possible shipment by every possible means oil tanks and tubes. Our customers desire additional oil tanks. Telegraph prospect.’ And if on or about the next date, by a telegram from the same Tokyo Company, dated June 28, 1941, he was advised as follows: ‘Decided today name of firm is Hua Hsin Company, address 320 Szechuen Road, Shanghai, China,’ whether or not he would think that that was an honest sale to the Hua Hsin Company in Shanghai, China, or whether those telegrams would give any possible inference except that Mr. Taka-

hashi was advised that the Mikuni-Shoko Company was telling him that they had decided to use the name of Hua Hsin Company?

"In the light of your experience, do you think that if this was an honest sale that the Mikuni-Shoko Company would not have used the words, 'Tanks have been sold to the Hua Hsin Company' instead of telegraphing Mr. Takahashi, 'Decided today name of firm is Hua Hsin Company' and the other language set forth in this telegram?

"My recollection of the evidence in this case is that Mr. Takahashi admitted that he had these four telegrams before he handed Mr. Leo Nye Sing the application of July 16, 1941. From the light of your experience and from the light of what Mr. Leo Nye Sing did in connection with this transaction with Hua Hsin Company, do you think that if Mr. Takahashi had deemed that that transaction was honest, that he would have agreed to pay three per cent of any per cent for someone to sign his name?

"It is for you to determine in the light of your experience whether, if Mr. Takahashi was endeavoring to sell these three tanks other than in the Orient at time when he understood he would be unable to ship them to the Orient, if that were any different than anyone would do; whether they were honest or dishonest, if they were not able to have tanks shipped to the Orient, when they had been ordered from that location.

"Under the evidence, as I remember it, the Mexico transaction as far as the contract is concerned, involved used plates, used steel plates.

"Under the evidence, as I remember it, the Mexico company executed an affidavit before a Mexican notary public and someone as a vice con-

sul signed a certificate to the effect that such Mexican notary public was a notary public. It is for you to determine in the light of all of the evidence whether actually that affidavit was true.

“That evidence has been introduced by the defendants upon the ground that it shows such good faith on the part of the defendants that they wouldn’t be willing to violate any other law in the light of their action in that connection. You have a right in connection with the Mexican transaction to read and consider what Mr. Takahashi wrote as to the Mexican situation.

“It is also for you to determine whether or not the Mexican transaction shows such good faith that anyone acting as Mr. Takahashi did would not violate any other law or whether it shows, or whether you may reasonably infer that it shows that when the blacklisted firm was unable to receive any more steel plates, for whatever purpose it wished to receive them, that Mr. Takahashi cancelled the contract after it had been suspended by the Mexico Company.

“In testing the evidence of the case, you have a right and should consider all of the statements and all of the exhibits 19, and 21 and 29, relative to these tanks. You have a right to determine whether the defendant Takahashi or the defendant Osawa was honest in stating the specific purpose of the article and the address of the ultimate consumer in a foreign country.

“In the light of all of the evidence, do you believe that in exhibit 21, the application of July 16, 1941, that Mr. Takahashi believed that the specific purpose and the address of the ultimate consumer for storage purposes was Hua Hsin Company, Shanghai, China?

“With respect to exhibit 19, the application of April 16, 1941, it is for you to determine whether or not it was honestly believed by Mr. Takahashi the purpose of the articles and the name of the ultimate consumer for storage purposes by Mikuni-Shoko Company. In that connection you may consider that in exhibit 20 signed by Mr. Leo Nye Sing it was stated that the consignee was (illegible) Company, Mukden, China. And that the purpose was to be used on horse-drawn cooley wagons and carts, \$25,000, 50,000 pieces of automobile roller bearings.

“The Kono and Company as the ‘ultimate consumer to be sold to the trade as above explained.’ In the light of that statement that those articles were to be sold to the trade as above explained, it is for you to determine whether or not the defendant Takahashi was frank and open with the Government in not stating, instead of the purpose of the ultimate consumer being storage purposes by Mikuni-Shoko Company—for sale by Mikuni-Shoko Company to the Japanese Army or Navy’.” (R. 271-278)

At the trial the defendants, and each of them objected to these comments on the following grounds and took the following exceptions:

“MR. GRIFFIN (Counsel for defendant Osawa) excepted on the following grounds:

“The Court then advised the jury, in effect, that he was permitted to comment upon the evidence, and the Court did comment upon the evidence, but the comment of the Court, to which the defendant Osawa excepts, was not unbiased, was not fair, was not met by the Court with any favorable comment of any kind in behalf of the defendant Osawa, but the comment was unfair,

biased, prejudicial, without any endeavor at all to equalize the force of the comment, but made directly and with emphasis for the purpose of advising the jury that the Court, irrespective of what the Court said in the general instruction, that they should take nothing from it, to advise the jury that the Court desired a verdict of guilty in this case. Considering the comment made by the Court upon the evidence, an exception is taken to each and every comment made by the Court in that particular. I desire to point out that having so commented, the defendants were entitled to have an equal fair comment in so far as their rights were concerned, to suggest to the Court this: While the Court by its comment has sought a conviction, because the defendants are charged with desiring to tranship three tanks, from Shanghai, China, to Japan, the jury were entitled to be told that they also should consider this—there is no evidence in the case that Japan required these three tanks in Japan. The evidence is that at the time in question Japan controlled not only the port of Shanghai but all the ports of China. The evidence is with that situation existing, the United States government denied the application, that the jury has an absolute right to infer, even if the shipments were direct to the Japanese Army, that those storage tanks might be and would be as useful in Shanghai, China, where its armies were employed, as it would be to ship them to Japan and transport oil from Japan, 1500 miles to Shanghai.

“THE COURT: It is understood and the Court rules that each exception taken by Mr. Griffin on behalf of Mr. Osawa shall be deemed taken by Mr. Bassett in behalf of Mr. Takahashi.

“MR. BASSETT (Counsel for defendant Takahashi): Thank you. In addition to what counsel has said in taking an exception to the Court’s commenting on the evidence, I wish to add that the comments were not only biased and prejudicial and unfair, and one-sided, but they were argumentative as well.

“THE COURT: I imagine that you would like all of the exceptions which Mr. Bassett has taken?

MR. GRIFFIN: Yes, I was just going to suggest that would round it out, then.

THE COURT: You may.” (R. 280-282)

ASSIGNMENT OF ERROR IX.

(R. 46-48)

IX. The court erred in instructing the jury concerning evidence of defendants' good character and reputation.

"There has been evidence introduced in this case as to the good reputation, that is, what people say as to the honesty or integrity of the defendants—and you shall give such testimony that weight as you believe it entitled to receive in determining whether or not the defendants are guilty as charged. But the jury will recognize that many men have borne good reputations, sometimes over many years, and have later been convicted of an offense which has existed for the same many years, during which every one thought they had a good reputation. And in this case, if you are convinced beyond a reasonable doubt that the defendants or either of them, by the evidence, are guilty of the three counts or any of them, it is your duty and obligation to find said defendants or such one guilty, regardless of how good their reputation may have been."
(R. 279)

To which the defendants excepted as follows:

"(MR. GRIFFIN). Also, the court went further and by his instructions wiped out all of the law of good reputation and honor, so far as the defendants are concerned, by his instruction that the jury could consider the reputation for what it is worth, but—as the jury knows, says the court—people with good reputation are guilty, and in this case, so and so and so. (R. 281)

THE COURT: It is understood and the court rules that each exception taken by Mr. Griffin on

behalf of Mr. Osawa shall be deemed taken by Mr. Bassett on behalf of Mr. Takahashi.

MR. BASSETT: Thank you. (R. 281).

THE COURT: I am going to give some additional instructions, in the light of the exception you have taken, and if you wish, it may be understood you will have the right of exception to each one without the necessity of expressly taking them. Is that satisfactory?

MR. GRIFFIN: Yes.

MR. CRANDELL: Yes.

MR. BASSETT: Yes." (R. 282)

(After the jury returned) the court said:

"Members of the jury, supplementing the instructions on the law, that you must accept as the law, I wish to say this to you: *In addition to what I have said* with respect to the testimony in the case regarding the reputation of the defendants or either of them, the jury are instructed that if, in the light of all the testimony and in the light of the reputation testimony, they believe the defendants or either of them are *not guilty*, they have a right to base that verdict upon their interpretation of the testimony, together with reputation testimony, if in the jury's opinion such satisfies them that the defendants are *not guilty*. (Italics supplied)." (R. 282).

(After the jury again retired) the court said:

"Do you wish to note any exceptions—though I have in mind what has been said—do you wish to except to each and every thing that I have said to the jury at this time?"

MR. GRIFFIN: I so understand.

MR. BASSETT: Yes.

MR. CRANDELL: Yes." (R. 284).

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APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION

APPELLANTS' REPLY BRIEF

FILED

FEB 29 1944

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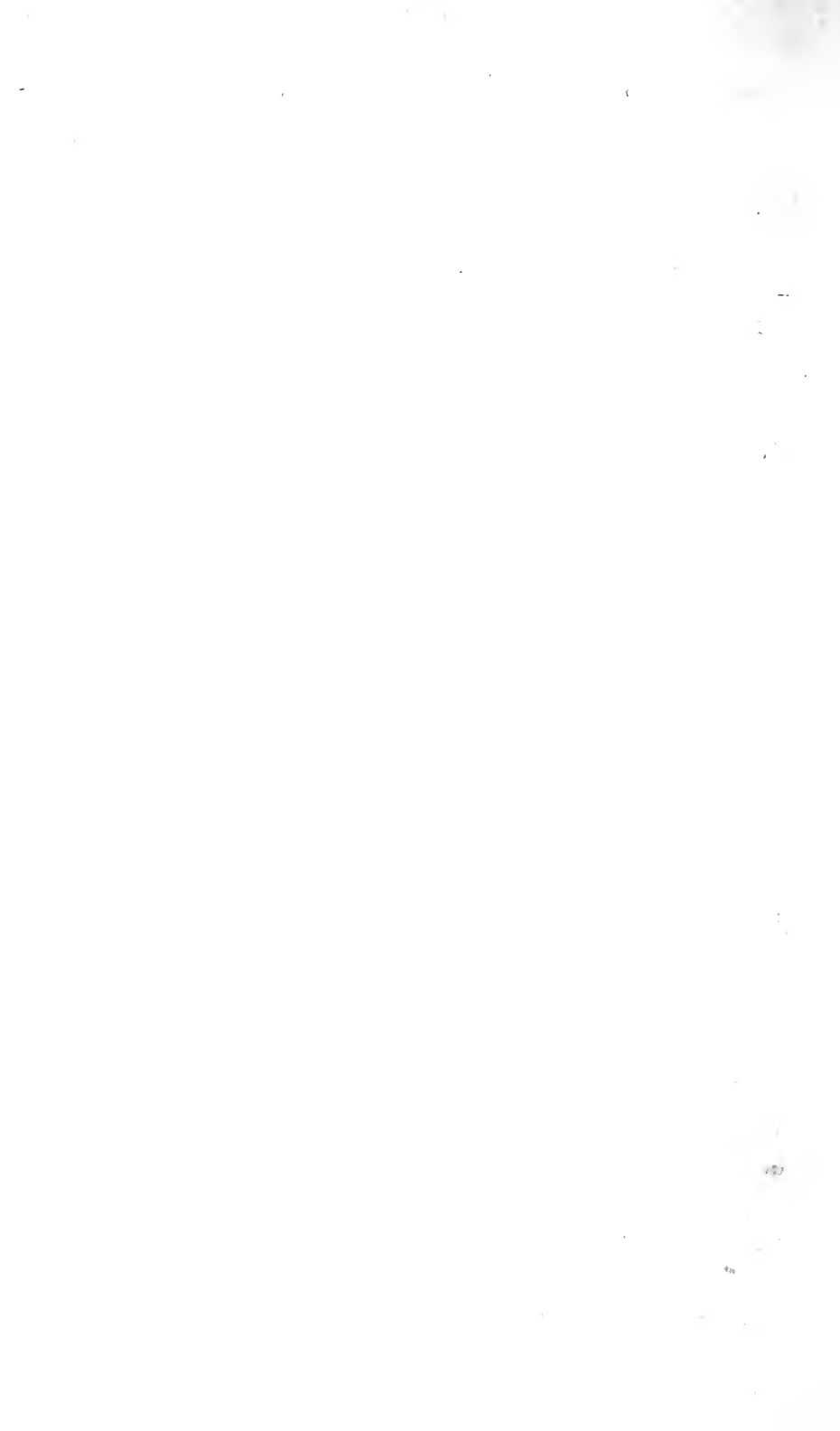
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**IN THE
UNITED STATES
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FOR THE NINTH CIRCUIT**

CHARLES T. TAKAHASHI and EDWARD
Y. OSAWA, *Appellants,*

vs.

UNITED STATES OF AMERICA,
Appellee.

No. 10415

APPEAL FROM THE DISTRICT COURT OF THE UNITED
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APPELLANTS' REPLY BRIEF

RE-STATEMENT OF THE FACTS

In their opening brief appellants stated facts sufficiently full and clear to present their case to this court satisfactorily, and respondent challenges it in no respect whatever.

Respondent has now filed its brief and the facts therein stated are equally accurate, and appellants have no objection to the veracity thereof. But respondent has muddied the waters. It has interpolated a vast number of quotations from the record (true enough in themselves) in an attempt to show the conspiracy charged in the indictment. These items begin before the conspiracy could possibly have come into existence

and continue until long after it ended, and are added together indiscriminately to matters occurring in the meantime, and if left to this court to decipher would cause Your Honors much needless work. Therefore, in order to save the court a needless waste of time we have concluded to re-state the case, *confining ourselves now entirely to the two briefs for our authority, if any.*

Appellants are importers and exporters, and have been for many years past, their place of business being located at Seattle. They did a considerable business with Japan. Previous to 1940 they had shipped to that country more than forty of these tanks. Their customer in Tokyo was Mikuni-Shoko Company.

Then in 1940 they received from Mikuni-Shoko Company an order for eleven new tanks. They were unable at the time to place this order in full, but contracted for the building of three of them.

This all happened before the war began with Japan, but things were getting taut between the two countries and the United States began to "crack down" by degrees.

The first move made was to give public notice to all concerned that within ten days from date of the notice those interested must have all their contracts fulfilled and their goods shipped out of the country; that after such date further shipments could be made only by special permission from the State Department.

Realizing that they could not get completion of the tanks within the ten days, Takahashi sent his manager Osawa, with his lawyer, to Washington to arrange for such delayed shipment. An application to

ship the tanks later on was made and took its usual course through the State Department, where it was turned down, and the two men returned to Seattle.

After canvassing the situation thoroughly Takahashi determined that it was useless to try to do further business in Japan until the war clouds drifted by. Accordingly, Osawa was sent to Tokyo to adjust the tank situation with Mikuni-Shoko Company and close the Tokyo office. At this time \$71,700.00 had been paid upon the uncompleted tanks, with moneys advanced by Mikuni-Shoko. After getting this situation adjusted and the Tokyo office closed, Osawa was destined to go to Shanghai, and there make some arrangement with some concern whereby Takahashi could import wood oil from China to the United States.

Arrived in Tokyo, he adjusted the business with Mikuni-Shoko Company by repaying to them the amount they had advanced, \$71,700, and taking title to the tanks.

His contemplated trip to Shanghai was nipped in the bud, however, because the Japanese government which controlled that port refused him permission for the trip.

But he did the next best thing possible to one in his circumstances. He appealed to the old customer Mikuni-Shoko Company to use their good offices to make the connection for him.

They obliged, and furnished Takahashi & Co. with the name of Hua Hsin & Co. as such representative.

In the meantime, Takahashi, having been advised of the settlement made and that he was now the owner

of the tanks, began to put forth efforts to sell them around home.

While this effort was being made he received an order for the three tanks from Hua Hsin Co., the new representative in Shanghai. As a part of this order Hua Hsin Co. blandly directed him to "deduct U. S. \$71,700 from our (Hua Hsin Co.) credit account." This was exactly the amount of the old credit with Mikuni-Shoko Company which was wiped out in the settlement with them.

Telephonic communication with Osawa, still in Tokyo, resulted in Takahashi being informed by Osawa that when the matter was called to their attention, Mikuni-Shoko Company had promised him (Osawa) "to get him a new contract."

In spite of this assurance Takahashi put little faith in the order, but, nevertheless, a new application to ship the tanks to Hua Hsin Co. at Shanghai was filed by Takahashi, to have in readiness for immediate delivery in case payment therefor came through.

In the meantime he continued his efforts to sell the tanks here, and no payment coming through from China he finally sold them in this country, and the matter was closed.

That was and is our case, and upon that basis we made a motion to take the case from the jury, which was denied, and becomes one of our assignments of error in this court.

Respondent then makes its showing. It says:

"The appellants were charged with conspiracy
(a) To violate Section 6 of the Presidential

order by filing the application in Washington in that the application should have shown the name of the consignee and the true country of ultimate destination.

(b) Filing the order.

(c) Making false statements in the order.”

Respondent then devotes many pages to a recitation of facts contained in the record, and which it claims sums up to this:

“In the present case, we have the appellants phoning one another, sending telegrams, writing. We have three tanks purchased for the Japanese Government—delivery Tokyo—an application rejected. Osawa going to Tokyo—never going near Shanghai—never heard of the Hua Hsin Company—save and except through the military authorities of Japan—a scheme to get their tanks to Tokyo—by Mexico, by Vladivostok—the name of Hua Hsin suggested by Ikuta—Osawa hounded day by day by the military authorities of Japan in Tokyo—an application signed by Leo Nye Sing, who never knew it contained 3 storage tanks, who had no connection with China Import & Export Company — \$71,700 advanced by Mikuni-Shoko Company at Tokyo—none by Hua Hsin Company—the boat going to Yokohama before it goes to Shanghai.”

Counsel quote us as admitting “that Kohno and Ikuta conspired to get their three 80,000 storage tanks to Japan, by means of a false application, but deny that they had any part in it” (Br. p. 20).

Counsel misread or misunderstood what we had said, namely:

“Had the defendants in the Orient (Kohno and

Ikuta) been on trial we would not contend that the case as to them should not have gone to the jury." (Br. p. 38)

We were contrasting the situation of appellants with that of the absent defendants, in the event of a trial together and a motion to take the case from the jury as to all defendants.

Appellants had recited how Mikuni-Shoko Co. had obtained Hua Hsin Co. to act in conjunction with appellants in the importation of wood oil from China, and how Mikuni-Shoko Co. in an attempt to back in again into the tank picture had inspired Hua Hsin to place an order with appellants for the three tanks. That Osawa had never been to Shanghai, had never met Hua Hsin Co., had had no communication with them, save through Mikuni-Shoko Co., yet an order, inspired by Mikuni-Shoko Co., had come through from Hua Hsin Co. to ship the tanks to them at Shanghai, which order resulted in the filing of the application complained about.

In view of this situation we suggested that while it was just to dismiss the case against appellants, the case as to the other defendants might be differentiated sufficiently to *carry the case to the jury*.

All this was apparently in answer to the query in our opening brief, "Where was any conspiracy? Who agreed with whom? Where was the meeting of minds? What was the end to be accomplished by two or more acting in concert?" And where we had further said, "The Government had no evidence of its own to offer. It was dependent upon such papers as it gained by the search and seizure and those subsequently fur-

nished them voluntarily by appellants, and such interpretation as it chose to put upon them, regardless of appellants' explanations."

But so far as we can see it still leaves the query unanswered. On its own showing the conspiracy had to date sometime after the business with Mikuni-Shoko Co. was closed in Tokyo and before November 2 following, when the search and seizure occurred.

But after closing all business with Mikuni-Shoko Company appellants never had any communication with them. They wrote appellants a couple of letters, to be sure. In these letters were some childish, gratuitous suggestions as to how to "get up evidence" and how to "get delivery of the tanks and prevent our business being detected," and more of like import. The letters were never answered. Takashashi was busy trying to sell the tanks here in this country.

So far as making an agreement is concerned the entire record undisputed shows Mikuni-Shoko Company tried to do so, and failed.

Finally, on this point, the charge of falsity in the application is that, instead of Tokyo, appellants named Shanghai as the place of ultimate destination.

Where is there any such evidence?

SEARCH AND SEIZURE

In our opening brief we suggested to the court that the justification for the search and seizure was to be predicated upon a state of crime being committed in the presence of the officers, and the law applicable

thereto. We had heard this argument advanced upon the hearing upon the petition for return of the papers, and repeated over and over again at the two trials, and our prophecy was based upon experience. So to invite a full discussion we suggested several points that we would maintain against any and all pleas of justification for the search and seizure, namely, (a) no arrest was made, (b) no search warrant was possessed by the officers, (c) no crime was being committed, (d) no proceedings against appellants were pending, (e) the papers seized had no connection with the purpose of the search, and (f) appellants were not even suspected of the crime or crimes with which they were later charged.

Respondent, however, does not join issue in this court. Instead, it starts with a proposition that the challenge to the search and seizure was untimely, in that it was delayed for four months after the search was made. This verges upon the pathetic. Any practitioner of today knows that any such challenge is timely, if only it precedes the date of trial, thus avoiding the court being called upon to try two issues at one and the same time.

Respondent then says, "Not only was there no request for the return of the papers, prior to the return of the indictment, but in fact we find a consent on the part of Takahashi, concurred in by his attorney, that the Government have not only the papers in question, but any other papers in his possession" (Brief, p. 19)

Counsel discriminates neither as to time nor papers.

The search and seizure complained of occurred on November 2, at the dock. On that date the Government, by exhibiting its badge of authority, forcibly searched the appellants, seized and walked off with appellants' papers. The damage had then been done, and was not condoned by appellants' subsequent actions in producing willingly any and all papers subsequently requested, and explaining any and all matters obscure to the Government agents. This becomes the more plain, as we reproduce the picture painted by respondent:

"Mr. Atherton testified: 'We talked with defendant Takahashi and with Mr. Masuda, his counsel, at his place of business, practically every day. * * * During the month of November, we obtained other papers from him. I borrowed papers at frequent intervals. I would borrow some papers and he would give them to me, and I would take them to the office, examine them and bring them back, and he would give me some more. That occurred two or three times. Of some of the papers that I thought important, I had a photostat copy made.'"

And also quoting from the testimony of appellants' attorney, Mr. Masuda:

"Mr. Takahashi called on me sometime about the 3rd of November, 1941, in connection with some request that had been made upon him by the Customs Department, or agents of the Customs Department of the United States. * * * He asked for advice about certain papers the agents wanted. He was willing to deliver the papers and I advised him to do so, and co-operate fully with the Government, and assist them in their investi-

gation. As far as I know, he made available to the agents everything that they wanted in the way of papers and documents.”

The respondent contends that Osawa can not complain of the search and seizure because “all the documents referred to except Exhibit No. 9 were in possession of Takahashi,” and that because Exhibit No. 9 belonged not to him but to Takahashi, Osawa cannot avail himself of the benefits of the Fourth Amendment.

But referring to the record, Atherton’s affidavit (R. 61) and Richards’ affidavit (R. 67), the officers took from Osawa not only Exhibit No. 9, but his brief case containing “other various papers” as well.

We emphasized Osawa and Exhibit No. 9 in our brief because the record as to the offer, the ruling thereon, and our exception, was most complete, and we deem it unnecessary now to go into a discussion of the “various other papers.”

But even had Exhibit No. 9 been the only paper seized, and granting that it belonged to Takahashi and not Osawa, we doubt if the point is well taken. The violation of the Fourth Amendment is the matter urged—obtaining evidence in violation of his constitutional rights. Even if Exhibit No. 9 could at one time have been deemed “an instrument of crime,” it lost that character when the crime was consummated, and ever after it was but “evidence.” It is immaterial, then, who *owned* the evidence when the search and seizure occurred.

The only case which we have been able to find in which this matter is discussed is *United States v. Thomson, et al.*, 113 F.(2d) 643. In that case two

defendants were charged with and convicted of the crime of conspiring to use the mails to defraud. One of the defendants, Thomson, contended that the papers and documents seized from his office at the time of his arrest were wrongfully taken in violation of his constitutional rights, which contention was upheld by the Circuit Court. It thus became necessary to determine whether the judgment of conviction against Thomson's co-defendant should also be reversed. Concerning this the court said:

“The papers seized in the instant case were in themselves not offending. They were taken for the sole purpose of getting evidence to convict the defendants of a crime with which they had been charged.

“It would be unjust and illogical to separate the two cases and uphold the judgment as to one defendant and reverse it as to the other. While the Constitutional amendments upon which the defense of illegal search and seizure is based may have been available to only one defendant, nevertheless the trial of the two together, and the introduction of evidence against them both may well have worked to the prejudice of the other.”

As the respondent has not chosen to discuss any of the questions proposed in our opening brief relating to the search and seizure, we find ourselves in the position of the Supreme Court of the United States, which lately said:

“This record does not make it necessary for us to discuss the rule in respect of searches in connection with an arrest. No offender was in the garage, the action of the agents had no immediate

connection with an arrest. The purpose was to secure evidence to support some future arrest.”

Taylor v. U. S., 286 U.S. 1, 52 S. Ct. 466,
76 L. ed. 951.

Again from that court:

“Here, the searches were exploratory and general and made solely to find evidence of respondents’ guilt of the alleged conspiracy or some other crime. * * * the papers and other articles found and taken were in themselves unoffending. The decisions of this court distinguish searches of one’s house, office, papers or effects merely to get evidence to convict him of crime from searches such as those made to find stolen goods for return to the owner, to take property that has been forfeited to the Government, to discover property concealed to avoid payment of duties for which it is liable, and from searches such as those made for the seizure of counterfeit coins, burglar’s tools, gambling paraphernalia and illicit liquor in order to prevent the commission of crime. *Boyd v. United States*, 116 U.S. 616, *et seq.*, 79 L. ed. 746, 6 S. Ct. 524; *Weeks v. United States*, 232 U.S. 383, 395, 58 L. ed. 652, 656, L.R.A. 1915B, 1177; *Gouled v. United States*, *supra* (255 U.S. 306, 65 L. ed. 651, 41 S. Ct. 261; *Carroll v. United States*, 267 U.S. 132, 69 L. ed. 543, 39 A.L.R. 790, 45 S. Ct. 280, *supra*.”

United States v. Lefkowitz, 285 U.S. 452, 52 S. Ct. 420, 76 L. ed. 877, at p. 883.

Respondent cites *Marron v. U. S.*, 275 U.S. 192, but in so doing relates that the search of the premises mentioned was *incidental to a lawful arrest*. The Supreme Court itself also distinguishes the *Marron* case on the same ground.

U. S. v. Lefkowitz, 285 U.S. 452, 52 S. Ct. 420, 76 L. ed. 877.

Finally, respondent cites *Landau v. U. S.*, 82 F.(2d) 285, but only to the point that "a person entering the country from a foreign country can be searched."

UNFAIR COMMENT

After devoting eight pages of our opening brief to setting forth matter taken verbatim from the comments of the court while instructing the jury, which we deemed objectionable, and five pages more pointing out our objections and citing our authorities, the district attorney makes no reference thereto. He neither challenges the words attributed to the court, nor criticizes our authorities.

Instead, he meets the situation by contrast. After searching the record he sets forth two instances wherein he considers the court *was* fair! In this he was unjust to the court. There were really more.

GOOD REPUTATION

Anything we said upon this question in our opening brief, and the authorities cited therein, is not referred to by respondent.

Instead, the assignment is met by the proposition that no request was made for any instruction.

No authority is given and, obviously, counsel was relying upon his general knowledge of the law, overlooking that perhaps good reputation might require special treatment.

To begin with, no request is necessary when evi-

dence of good reputation is introduced. The court must instruct upon the point anyhow.

However, the court gave an instruction, without request, to which the appellants excepted, and it goes without saying that if he instructs at all he must do so correctly.

We respectfully submit that the judgments should be reversed as to both appellants and remanded with instructions to dismiss the action, or, in the alternative, to grant a new trial.

Respectfully submitted,

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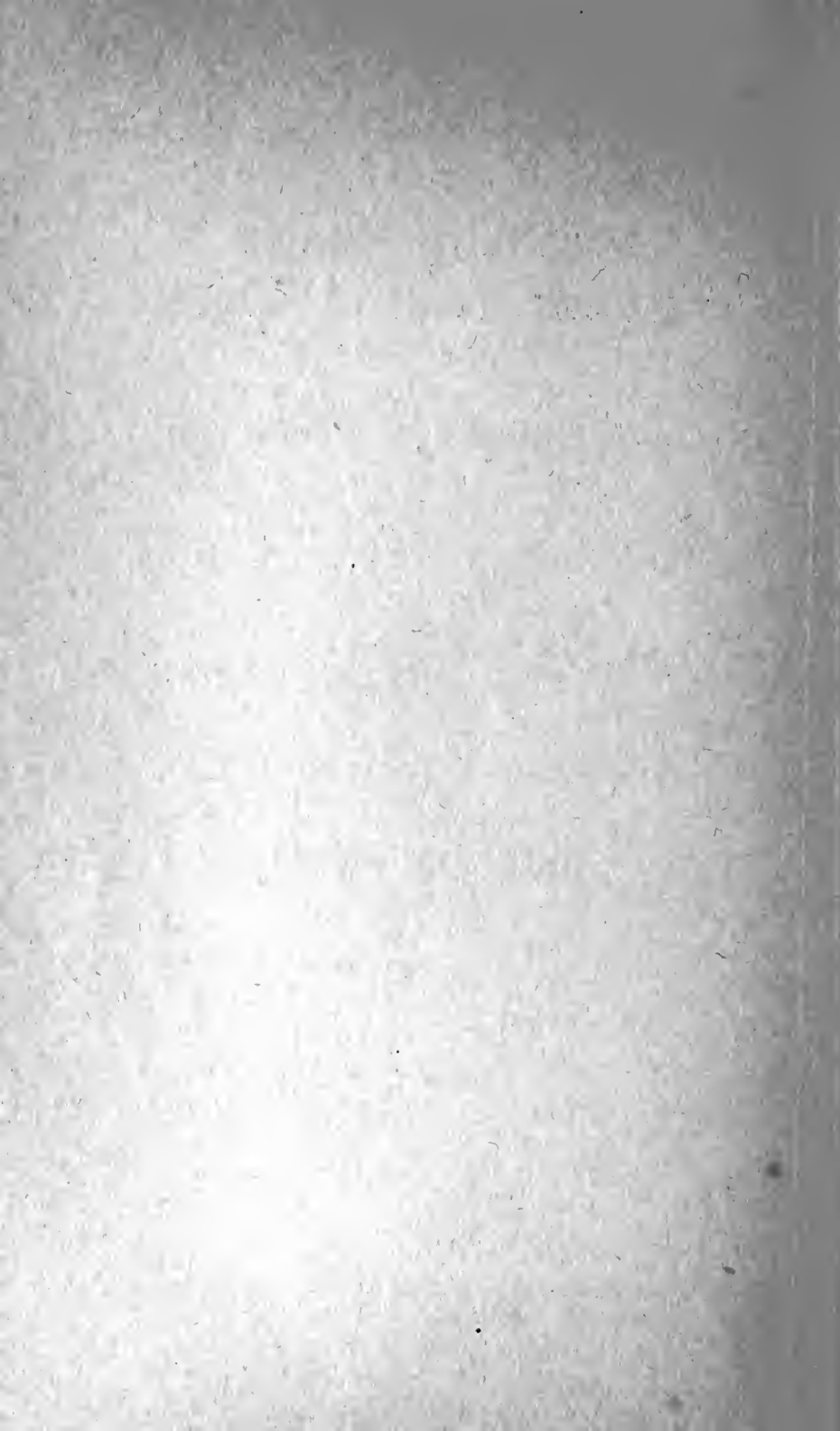
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HONORABLE LLOYD L. BLACK, *Judge*

BRIEF OF APPELLEE

JURISDICTION

The appellants herein were, as stated by appellants, indicted and convicted for violation (1) of Section 88, Title 18, U.S.C.A., and (2) of Section 6 of the Executive Order approved by the President March 15, 1941, effective April 15, 1941, promulgated pursuant

to Section 99, Title 50, U.S.C.A., and (3) of Section 80, Title 18, U.S.C.A.

Section 6 of the Executive Order provides:

“The country designated on the application for license as the country of destination shall in each case be the country of ultimate destination. If the goods to be exported are consigned to one country with the knowledge that they are intended for trans-shipment thence to another country, the latter country shall be named as the country of destination.”

The indictment charged the appellants herein, together with M. Ikuta, Koh Kohno, alias Willie Chang and M. H. Kiang, with (1) entering into a conspiracy to violate the foregoing regulation, (2) with the violation thereof and (3) with making false, fraudulent representations in respect thereto.

STATEMENT OF THE CASE

I.

The defendants in the above entitled cause and their respective business associations during the period referred to in the indictment are as follows:

1 Charles T. Takahashi, American-born Japanese owner of C. T. Takahashi & Co. of Seattle, Washington.

2 Edward Y. Osawa, General Manager of C. T.

Takahashi & Co., Seattle, Washington.

3 M. Ikuta, Director of the Mikuni-Shoko Company of Tokyo, Japan.

4 K. Kohno, alias Willie Chang, a representative of the Mikuni-Shoko Company of Tokyo, Japan.

5 M. H. Kiang, a representative of the so-called Hua Hsin Company of Shanghai.

Persons not indicted, but who appear in the proceedings, are Leo Nye Sing, otherwise known as Willie Leo, a Chinese merchant of Seattle, and William Shenker, salesman for Takahashi.

Takahashi, as stated in appellants' brief, for a number of years had been engaged in the exporting business, under the firm name of C. T. Takahashi & Co. Osawa for the past eleven years was his General Manager. The main office was in Seattle, Washington. Prior to 1938, Takahashi's export business was divided about fifty-fifty between China and Japan. For the Chinese business he used the name of "China Import & Export Company." Since 1938, however, he has done practically no business in China.

In 1940, acting through Mikuni-Shoko Company, he purchased for the Japanese Government fifteen second-hand storage tanks, five of which were for the

Japanese army and ten of which were for the Japanese navy (R. 365).

In November, 1940, he requested Mikuni-Shoko Company to secure for him orders from the Japanese Government for *new* tanks (R. 366-368). In his letter to Mikuni-Shoko Company, he stated that the new tanks, if ordered, would be purchased from the Graver Tank Company or the Sonken Galamba Supply Company; that the tanks would be delivered from Chicago to Seattle or Portland, "from which port we intend to ship out to Japan quietly" (R. 369).

On November 24, 1940, in confirmation of a telephonic order, Takahashi acknowledged to Mikuni-Shoko Company receipt for an order for eleven new tanks. The closing paragraph of the letter reads as follows:

"Therefore, we are writing this letter with a view that you will prepare yourself for getting further new tank business from the Kaigun or from the Rikugun, for shipment during March or April" * (R. 371).

Kaigun means Japanese Navy, Rikugun means Japanese Army, Gunbu means Japanese military authorities.

At the time of the order, Takahashi had \$71,700 cash credit, belonging to Mikuni-Shoko Company, to

apply on the tanks. He purchased three tanks from the Sonken Galamba Supply Company (R. 150), but was unable to obtain the other eight.

Upon completion of the three new 80,000 tanks, an embargo had been placed upon shipments to Japan, save by permit from the State Department. The Regulation provided specifically that, in the application for the permit, the name of the consignee and the actual country of ultimate destination should be inserted.

Accordingly, Takahashi sent Osawa to Washington, D. C. to obtain the necessary permit. An application was regularly made, the name of the purchaser not being inserted, however, as the Japanese Government, but as the Mikuni-Shoko Company, and the place of ultimate destination was properly named as Tokyo, Japan. This application was rejected by the State Department, as contrary to national defense.

Immediately following the rejection of the application, Osawa was sent by Takahashi to Japan. Takahashi's mother at the time resided in Japan and was a friend of M. Ikuta, one of the Directors of the Mikuni-Shoko Company. While in Tokyo, Osawa was in constant communication with F. Kohno and M. Ikuta. Kohno in 1940 had spent four months in Seattle, practically every day being in Takahashi's office.

When in Japan, Osawa was hounded by the Japanese authorities for delivery of the three tanks in question (R. 220). He telephoned Takahashi (R. 217), and wrote him that "We sure are on a spot on the three tanks." (R. 306)

Accordingly, an attempt was made by Osawa, Takahashi, Kohno and Ikuta to ship the tanks through to Japan.

First, Shenker was sent to Mexico. While he had other reasons for being in that country, one of the purposes was to arrange to export goods from this country to Mexico and from there to Japan (R. 219). Osawa and Takahashi decided, however, that this project was not feasible.

Another plan was to ship them to Vladivostok, but this likewise was determined to be impracticable.

Accordingly, Kohno went to Shanghai, and under the name of Willie Chang opened up an office in that city, as agent of the China Import & Export Company. Ikuta, for the purpose of carrying out the conspiracy, also made a trip to Shanghai (R. 303). Ikuta made arrangements in Shanghai for orders from Takahashi to be directed to either the Hua Hsin Company or the Tonway Trading Company (R. 309). He phoned this to Takahashi, after conferring with Osawa, stating

that Kohno, whose name in Shanghai, was Willie Chang, was to be the representative of Takahashi in that city.

Ex. 10 On June 27, 1941, Mikuni-Shoko wired, "Do utmost to arrange earliest possible shipment by every possible means oil tanks." (R. 294, 295)

Ex. 11 On June 28, 1941, Ikuta cabled, "Decided today name of firm (is) Hua Hsin Company, 320 Szechuen Road, Shanghai, China."

Ex. 13 On July 8, 1941, Mikuni-Shoko wired, "You will receive telegram from Hua Hsin Company."

Ex. 17 On July 16, 1941, Mikuni-Shoko, through M. Ikuta, wrote Takahashi,

"As informed you previously by phone and telegrams, our Mr. Kohno has been working very hard every day in Shanghai under the present difficult conditions as stated in our last respects No. 28 and as known well by your Mr. Osawa, and at last we have decided as follows:

1 Hua Hsin Company, 320 Szechuen Road, Shanghai. * * *

This firm has been recommended by the Military people here (Tokyo) * * *

You therefore, intending to export to them the

13 all in T at w

following goods, can now apply for the export license. * * * 3 new tanks, 80's, and its necessary accessories, which we ordered from you last year * * * We trust, by this, we can prevent *our business from being detected* by anybody else and can get the delivery of 3 tanks safely." (R. 307, 308) (Italics ours)

In accordance with the arrangements made by phone, a cable was received by Takahashi from the Hua Hsin Company, and attached to the application, and sent to the State Department at Washington, D. C.

Takahashi had done no business with the Hua Hsin Company, had never written to that company, had never phoned them, had no credit whatsoever with the company, knew nothing about them, save and except through the Mikuni-Shoko Company and Ikuta. He had \$71,700 credit from the Mikuni-Shoko Company and none from the Hua Hsin Company, yet the Hua Hsin Company told him to apply the \$71,700 credit to the payment of the tanks. *and T. thought this peculiar, refused.*

Upon receipt of the telegram, Takahashi called in one Leo Nye Sing, a Chinese friend of his living in Seattle. An application was made for a permit directed to the State Department, the name of the consignor being the China Import & Export Company.

*this is the application explained
it is dated July 16, in found*

This was signed by Leo Nye Sing, as the owner of that company. The application was sworn to by Leo Nye Sing. The name of the consignee named therein was the Hua Hsin Company. The place of ultimate destination named therein as Shanghai. Leo Nye Sing recognized his signature to the application, but had never heard of the Hua Hsin Company; never knew that an application was signed by him for these three new eighty thousand storage tanks. Takahashi admitted that the application was drawn up by him in his office, and that he had called in Leo Nye Sing, and had Leo Nye Sing sign the same, and that the place of ultimate destination named therein was inserted by him as Shanghai, China, and not Tokyo, Japan, and the name of the consignee as the Hua Hsin Company, and not the Japanese Government. This application was finally rejected by the State Department.

II.

The statement of facts necessarily includes the exhibits concerning which a petition to suppress was filed, and denied by the Court.

Osawa went to Tokyo, Japan, in March, 1941, directly after the petition to ship the three new 80,000-barrel storage tanks had been rejected. He wrote to Takahashi every day, phoned him regularly and was

at all times in communication with Mikuni-Shoko Company and the Military Authorities of Japan (Gunbu being the Japanese term).

He returned to Seattle on November 2, 1941. During the entire six months in Japan, he was endeavoring to curry favor with the Japanese Military Authorities, in order to secure some of their export and import business. The stumbling block was the failure of Takahashi to deliver to the Japanese Government the three 80,000-barrel, steel storage tanks. Accordingly, arrangements were made between Ikuta, Kohno, Osawa and Takahashi, for the delivery of these three tanks to the Japanese Government at Tokyo.

The conspiracy to so do, was discovered by the Customs Agents in Seattle on November 2, 1941, and the next few days, by an examination of the baggage of Osawa, the contents of a brief case of Takahashi and certain papers in Takahashi's office.

For a number of months, the Customs officials had Takahashi under observation for a violation of the Federal Funds Control Act. Takahashi, as a prominent exporter to Japan, had a permit to go upon an incoming vessel, but was specifically forbidden from entering the Customs enclosure. The Customs enclosure is a space set aside for the examination of bag-

gage. After the boat from Japan docked, Takahashi went aboard. In the meantime, a letter had been discovered in Osawa's stateroom, suggesting that he try to get six pairs of silk stockings past the Customs officials.

The Customs Agents, Atherton and Richards, observed Takahashi within the Customs enclosure — where he was specifically forbidden to be — with a brief case — conversing with Osawa. They saw Osawa and Takahashi passing papers back and forth.

Accordingly, they searched the brief-case of Osawa, separate from Takahashi, and found therein plaintiff's Exhibit No. 9, being a letter addressed to China Import & Export Company, said letter reading as follows:

“(Foreign Characters)

(Pencil Notations E-Y.O.B.C. 11/2/41 A.D. R.

Hua Hsin Company
Telephone: 15914 320 Szechuen Road

Shanghai, July 4th, 1941.

Messrs. China Import & Export Company
212 5th Ave. So.,
Seattle, Washington,
U.S.A.

Gentlemen:

As a consequence of our long business discus-

sion with your representative, Mr. W. L. Chang, we wish to open our most cordial business relation with your goodselves by our placing an order with you for three new storage tanks, which we have heard that you have in your hands as available stock, and we beg to confirm our today's telegraphic order as follows, which we trust, would have been receiving your most careful attention at your end.

Article: New storage Tanks, capacity 80,000 Bbls. ea. Specifications and Blue-Prints as handed by Mr. Chiang.

Quantity: 3 (three) complete sets with complete accessories and construction materials, such as welding rods and flux.

Price: CIF Shanghai U. S. \$29,500 — per complete set.

Amount: U. S. \$88,500.—

Payment: Deduct U.S. \$71,700 from our credit account. Balance shall be remitted shortly. All particulars as per Mr. Chang's letter.

Packing: Usual Export Custom.

Shipment: From Pacific Coast July/August 1941.

Destination: Shanghai, China.

For your information we might as well add here that these tanks are to be imported for the local storage purpose and will not be re-exported to any country with whom you are not on friendly terms.

Thanking you in anticipation for your kind

attention to the above, we beg to remain, Gentlemen,

Yours faithfully,

HUA HSIN COMPANY.
M. H. KIANG,
Manager.

(Endorsed): Filed May 15, 1942.

(Pencil Notation): 10-6-42." (R. 292, 293)

Inasmuch as China Import & Export Company was Takahashi, and the letter itself disclosed \$71,700 of foreign funds in the possession of Takahashi, and Osawa and Takahashi had been exchanging papers, the Customs officials examined Takahashi's brief-case also. In that brief-case were found the Exhibits complained of by appellants — to-wit:

1. A telegram in code transmitted by Mikuni-Shoko Company on or about June 27, 1941, at Tokyo, Japan, addressed to Takahashi & Co., Seattle, Wash., U.S.A., plaintiff's Exhibit No. 10, the pertinent part, as translated, being,

"Do utmost to arrange earliest possible shipment by every possible means Oil Tanks and Tubes. Our customer desires additional offers Oil Tanks telegraph prospect." (R. 294, 295)

2. Letter dated July 5, 1941, addressed by Edward Osawa at Tokyo, Japan, to C. T. Takahashi, plaintiff's Exhibit No. 14.

“ * * Getting down to serious business, I just received your letter No. 20. Was quite interested in the activity in Mexico and you can rest assured that I will do all possible to put it over over here. Have already discussed the situation with Ikuta and upon receipt that you can ship the machinery out, will go into real action. Have explained to him regarding payment and I think they understand. Too bad that everytime we use Shenker, it proves expensive. * * *

Shanghai office: The reason I was unable to send you the name of the Shanghai office is that it was not until shortly that Ikuta came to terms with the people over there. Seems they wanted too much *commission*. In order to make it easier for you in *making application* you can now say your representative is Willie Chang who is Schnicklefritz. The firm of Chang you better not use. Hereafter you better use the two firms, namely Hua Hsin Co. 320 Szechuen Road, Shanghai and Tonway Trading Co. * * * These two firms are the ones that Mikuni has made definite connection with in Shanghai. * * *” (R. 298-300) (Italics ours)

3. Exhibit No. 11 — ^{June 28} Confirmation of telegram from Mikuni-Shoko Co. to Takahashi, pertinent parts reading:

“Decided today name of firm is Hua Hsin Company, address 320 Szechuen Road Shanghai. Confirm by telegram in order to prevent any misunderstanding.” (R. 295, 296)

4. Letter from Osawa to Takahashi, dated July 12, 1941, plaintiff's Exhibit No. 15, pertinent parts being:

"Its been a long time since Kohno and finally Ikuta went to Shanghai and was finally able to make arrangements. They have a very good set up and have a *sort of an office there*. In order to make work progress better it is better that we have our own name registered there too under Cieco so Ikuta is including our name in the office too and Kohno will be our representative there. * * *

Vladivostok and Netherland East Indies is absolutely out. Even if you get permit and ship there, it is no good because you cannot *tranship from there*. The Government will seize it for their own use and as the gunbo has no control there, they cannot do anything." (R. 303)

5. Letter from M. Ikuta, Director, Mikuni-Shoko Co. Ltd., to C. T. Takahashi & Co., plaintiff's Exhibit No. 17, the pertinent parts being as follows:

"Re: Shanghai: *dated July*

As informed you previously by phone and telegrams, our Mr. Kohno has been working very hard every day in Shanghai under the present difficult conditions as stated in our last respects No. 28 and as known well by your Mr. Osawa, and at last we have decided as follows:

- 1) HUA HSIN COMPANY, 320 Szechuen Road Shanghai, Cable Add. HUACO. Phone: 15914.

This firm has been recommended by the Military people there, being their financial standing considered as very good, and after having made various discussions and talkings about this firm at Shanghai, this company has been considered as most suitable for our purpose, which they

agreed to co-operate with you and us. Good arrangement and better understanding have been secured. You therefore, intending to export to them the following goods, can now apply for the export license which we hope, you will surely succeed in securing from your government.

3. New Tanks 80s and its necessary accessories, which we ordered from you last year.

* * *

With reference to the advance money paid by us to you already, it would become necessary to prepare some evidence that all the payment against the 3 new tanks have been made to you by HUA HSIN CO. in place of our firm, which please take note. We trust, by thus, *we can prevent our business from being detected by anybody else and can get the delivery of the 3 tanks safely.*

* * *

Hoping to hear from you a good news at the soonest possible time and also hoping anything trouble will not be occurred in our tactics, we are, (Italics ours)

Yours faithfully,

FOR MIKUNI-SHOKO CO. LTD.
M. IKUTA

Director"

(R. 307, 308, 310)

6. Exhibit No. 12 was a telegram in code from Mikuni-Shoko Co. to Takahashi. Translated it read:

"With reference to trucks, mining machinery you may receive telegram from Tonway Trading Company 129 Hamilton House 170 Kiangse Road Shanghai instead of Chang stop Chang Willie is Kohno representative of your China Import &

Export Co." (R. 296, 297)

7. Exhibit No. 16 was a letter from Osawa to Takahashi, the pertinent parts being as follows: *dated*

"When you talk to Gunbu it is quite different from when you talk to ordinary business houses.

* * * Of course, they will overlook if we cannot ship because of definite embargo like our tanks but even on tanks they are hounding us every day. We sure are on a spot on the three tanks. I doubt if a day goes by that they don't call us or say something about them. If we could only get those three tanks out, it would be a life saver and they would do almost anything for us." (R. 306).

8. Exhibit No. 18, referred to, is a letter from Mikuni-Shoko Co. to Takahashi, the pertinent parts being as follows: *Ju*

" * * * 3 New Tanks: Should we fail in securing other various goods due to the reasons beyond our control, yet we are hoping to secure this item, first of all, because we shall have nothing to reward for our Gunbu's patronage. The Gunbu people are enthusiastically desiring to get the delivery of this item and are encouraging us at all times. They are trusting us for our abilities as well as your own." (R. 311, 312)

Appellants in their petition filed on April 27, 1942, almost six months after the search, state that the Customs officials arrested and detained Osawa and Takahashi, and took from them certain papers, money, etc., and afterwards took possession of their

offices; that a demand was made for the return of said papers, but the same was refused.

No demand was made for the return of the papers until April 27, 1942. Neither Osawa or Takahashi were detained by the Customs officers. At the request of the officers, Takahashi and Osawa came to the office the next day. A meeting was arranged for the following morning, Takahashi's attorney being present. Every day during the following week, Atherton, Richards, Takahashi and Masuda, Takahashi's attorney, conferred. Masuda appeared in Court as a witness for the appellants. His testimony was as follows:

"Mr. Takahashi called on me sometime about the 3rd of November, 1941, in connection with some request that had been made upon him by the Customs Department, or agents of the Customs Department of the United States. * * * He asked for advice about certain papers the agents wanted. He was willing to deliver the papers and I advised him to do so, and co-operate fully with the Government, and assist them in their investigation. As far as I know, he made available to the agents everything that they wanted in the way of papers and documents." (R. 238, 239)

And Mr. Atherton testified: "We talked with

defendant Takahashi and with Mr. Masuda, his counsel, at his place of business, practically every day. * * * During the month of November, we obtained other papers from him. I borrowed papers at frequent intervals. I would borrow some papers and he would give them to me, and I would take them to the office, examine them and bring them back, and he would give me some more. That occurred two or three times. Of some of the papers that I thought important, I had a photostat copy made." (R. 165)

So we find that, not only was there no request for the return of the papers in question, prior to the return of the indictment, but in fact a consent on the part of Takahashi, concurred in by his attorney, that the Government have not only the papers in question, but any other papers in his possession.

Takahashi in his interview admitted that the tanks described in the second application were the same as the ones described in the first — that he had no \$71,700 credit with Hua Hsin Co. He denied that the Hua Hsin Company was connected in any way with the Mikuni-Shoko Company.

At the close of the case, appellants made a motion for dismissal, which was denied. The jury returned a verdict, motions for a new trial were made

and denied. The defendants were sentenced, and this cause is now here for review.

ARGUMENT AND AUTHORITIES

Counsel for appellants in their brief admit that Kohno and Ikuta conspired to get their three 80,000 storage tanks to Japan, by means of a false application, but denied that appellants had any part in the conspiracy.

One who comes into a conspiracy after it has been formed with knowledge of its existence, and with the purpose of forwarding its designs, is equally as guilty as if he had participated in its original formation.

Nyquist v. United States, 2 Fed. (2d) 504;
Hagen v. United States, 268 Fed 344;
United States v. Olmstead, 5 Fed. (2d) 712.

Only one overt act is necessary.

Jung Quey v. United States, 222 Fed. 766.

In this case all were proven.

That the conspiracy was not successful is no defense.

Kramer v. United States, 245 U.S. 478, 62 Law E. 413.

Place of the conspiracy is immaterial, provided overt act is committed within jurisdiction. Conspir-

acy may be tried in any district where overt act is committed.

Diehl v. United States, 98 Fed. (2d) 545;
Smith v. United States, 92 Fed. (2d) 460;
Rivera v. United States, 57 Fed. (2d) 816;
Sell v. Rustad, 22 Fed. (2d) 968.

In the present case, we have the appellants phoning one another, sending telegrams, writing. We have three tanks purchased for the Japanese Government—delivery Tokyo — an application rejected. Osawa going to Tokyo — never going near Shanghai — never heard of the Hua Hsin Company — save and except through the military authorities of Japan — a scheme to get their tanks to Tokyo — by Mexico, by Valdivostok — the name of Hua Hsin suggested by Ikuta — Osawa hounded day by day by the military authorities of Japan in Tokyo — an application signed by Leo Nye Sing, who never knew that it contained 3 storage tanks, who had no connection with China Import & Export Company — \$71,700 advanced by Mikuni-Shoko Company at Tokyo — none by Hua Hsin Company — the boat going to Yokohama before it goes to Shanghai. On the merits, the jury could bring in but one verdict — there certainly was evidence for the jury to determine the place of ultimate destination, to-wit, Japan and not China.

*The Petition for the Return of the Documents
taken at the Dock.*

As to Appellant Osawa:

Takahashi's brief-case was examined by the agents when Osawa was not present.

All the documents referred to except Exhibit No. 9 were in the possession of Takahashi. Osawa neither had possession, nor ownership of the papers.

Inasmuch as the papers in question neither belonged to him, nor were taken from his possession, appellant Osawa could not object to their admissibility.

A Guckenheimer v. United States, 3 Fed. (2d) 786;
Ingram v. United States, 113 Fed (2d) 966;
Lewis v. United States, 92 Fed. (2d) 952;
Whitcombe v. United States, 90 Fed. (2d) 290.

The only exhibits involved in this appeal taken from Osawa was Exhibit No. 9. This exhibit did not belong to him. It was a letter addressed to China Import & Export Company (Takahashi). He had it for the purpose of showing it to Takahashi.

Not belonging to Osawa, he cannot complain as to its admissibility.

In *Kelley v. United States*, 61 Fed. (2d) 843, the Court said:

"The most that can be claimed here is that Kelley as an employee had a certain physical custody and control of the illegal business and of the

incriminatory evidence. That is not sufficient.”

And in the case of *United States v. Hoyt*, 53 Fed. (2d) 882-884:

“As to the corporate papers * * * an additional reason for denial of this motion is found in the principle laid down in the cases of *Essegee v. United States*, 262 U. S. 151 (and other cases), wherein it was held unequivocally that an officer of a corporation is not given any right to object to the production of papers because they may disclose his guilt, even though they are in his custody.”

That the Customs Agents had the right to search Osawa is, of course, not questioned.

In the case of *Landau v. United States*, 82 Fed. (2d) 285, certiorari denied 56 S.Ct. 747, the Court held that a person entering the country from a foreign land could be searched. The authority is given by 19 U.S.C.A. 482, and the Regulations of the Secretary of the Treasury promulgated thereunder.

“Takahashi having boarded the vessel, and having gone from the vessel to the Customs enclosure — a place where he was forbidden to enter — and having been seen passing papers back and forth with an incoming passenger, placed himself in the same position as an incoming passenger of the boat. The Regulation that a passenger’s effect could be searched, would be futile, if a person who had gone upon the

boat, exchanged papers with a passenger, and then gone into the enclosure where all the baggage of the passengers was taken, would be exempt.

Counsel for appellants do not deny the right of the Customs officials to make the search.

And the search disclosed — not only evidence of the conspiracy, but the very instruments by which the conspiracy was carried on — namely the documents to be used in carrying out the conspiracy — the need for the conspiracy — and the manner of its execution.

In the Landau case (*supra*) the Court held that the memorandum, consisting of an exact tabulation of the smuggled merchandise, constituted an instrumentality of the crime.

In the case of *Marron v. United States*, 275 U. S. 192, the Supreme Court held that it was not unreasonable to find that ledgers and bills were used to carry on the business of maintaining a nuisance, and they could be seized on a search of the premises incidental to a lawful arrest.

In *Foley v. United States*, 64 Fed. (2d) 1-4, referring to books of unfilled orders, the Court said:

“The things seized were not mere evidence. They were things actually used in committing the

crime of conspiracy charged, and considering the extent of the business done were even necessary to its execution.”

In *United States v. Hart*, 214 Fed. 655, the Court said:

“Burglar’s tools, used by the owner to commit a crime may be kept from his possession when found on his person or on the premises or elsewhere, and as it is a crime to enter into a conspiracy with others to defraud * * * it seems to me that the writings of the defendant, used by them to form the conspiracy and in committing overt acts, and showing its formation or existence and attempted execution, should be treated as tools used in the perpetration or attempted perpetration of crime, and held to be used in evidence.”

See also, *United States v. Poller*, 43 Fed. (2d) 911;

United States v. Hoyt, 53 Fed. (2d) 882.

The real evil aimed at by the 4th Amendment is the search itself, that invasion of a man’s privacy which consists in rummaging among his effects to secure evidence. Its purpose was not for the protection of a criminal, who having been legally searched, was found to possess the very instrumentalities by which this crime or any other crime had been committed.

Takahashi, having been legally searched, having

voluntarily offered to the Customs Agents all his papers for examination, and the exhibits introduced being the very instrumentalities by which the conspiracy was being executed, the Court's action in refusing to suppress, and allowing the exhibits to be introduced in evidence, was in accord with the laws of the United States.

COMMENT ON THE EVIDENCE ASSIGNMENT OF ERROR No. VIII.

The Court properly instructed the jury as to their duties. He frankly told them that as to the facts, they were the sole judges.

“No opinion that the court may have nor that you may think the court may have as to the guilt or innocence of the defendants or the credibility to be accorded the testimony of any witnesses or as to the inferences to be drawn from any circumstances proven is controlling or binding upon you. It is for you to determine the facts in this case.” (R. 267)

“I am not going to tell you what my verdict would be if I were on this jury. That is your responsibility. But if I did tell you, or what I may say as to the evidence does not bind or control you at all. It would be your privilege to differ absolutely from me or to agree with me if you independently so decided.” (R. 270)

And after the objection raised by counsel, the Court emphasized this very point by saying:

“With respect to certain comment I made on certain evidence, I wish to remind you again that you are not bound or controlled by any comment at all I make on the facts. You have the right absolutely and entirely to disregard whatever I say.” (R. 283)

Now then, coming to the question of the fairness or unfairness of the comments—

“The jury may be advised that the Court sees nothing against the defendants or either of them in the fact that Mr. Osawa used some other method than a passport to go to Japan. It was perfectly legal and indicates in no wise any guilty knowledge or any guilty purpose.” (R. 276)

Certainly the Court was fair to the defendants in *that* comment.

And again:

“But with respect to Exhibit 20 the Court wishes the jury to understand that there is no inference to be drawn against the defendants or either of them upon the ground that bearings were improper to be sent to Mukden.” (R. 283)

Certainly that comment was fair to the defendants.

In the case of *Pfaff v. United States*, 85 Fed. (2d) 309, the Court said, “You wouldn’t need many customers like that”, and “That is about the worst I ever heard.” The Appellate Court in passing on this comment said:

“Judges presiding in Federal courts may comment upon the evidence and express opinions respecting the effect of such evidence, even of guilt or innocence of the accused. *Horning v. District of Columbia*, 254 U.S. 135, 65 L.Ed. 185; *Sparf v. United States*, 156 U.S. 51, 39 L.Ed. 343.”

In *Woo v. United States*, 73 Fed. (2d) 897, on page 900, the comment of the Court complained of read as follows:

“How can Americans know the inside of Chinese, who cannot talk English and whom they do not talk to, but simply see them on sundry occasions?”

The Appellate Court in ruling on this comment said:

“It is proper for the trial judge to comment upon all facts and circumstances which might aid the jury in determining the guilt or innocence of the accused.”

And in *Hargreaves v. United States*, 75 Fed. (2d) 68, the following comment came on for review:

“Take the Brown incident, for instance. There again upon the question of intent the inquiry arises in my mind: What was the necessity of borrowing that money from the Bank of America in the first place? Does it indicate that the defendant in this action did not want his own bank to know about it at the time? The money admittedly was for his use; why didn't he borrow the money from the bank and give his own note for it? If now, in illustrating the case given you a

moment ago, if he could not have gotten that money out of his own bank, then the method used would be a misapplication of funds, even though the Brown note were fully secured." etc.

This didn't constitute reversible error.

In *Richards vs. United States*, 63 Fed. (2d) 338, the error complained of consisted in the following:

"They say you should not count your chickens before they are hatched. I should say this is counting your chickens before you ever started in to raise hens."

Also, the following comment by the Judge concerning a book put out as advertising matter, with the knowledge of the defendants. The Judge characterized it as "learned nonsense," as "a thing very cleverly got up, as I say, to impress the ignorant." The Appellate Court said that while the criticism was sharp it was not unfair.

In the present case, there is no pretense that the trial Judge quoted any testimony incorrectly, or that he referred to any exhibit that was not duly admitted in evidence. Likewise, there is no pretense that he did not emphasize, again and again, that any comment made by him was not controlling in any way on the jury.

The true rule in regard to comments on the evidence and inferences from the evidence is set forth in

the recent case of *Scratchfield v. Kennedy*, 103 Fed. (2d) 467, as follows:

“The trial judge is not limited to abstract instructions. It is within his province, whenever he reasonably thinks it to be necessary, to assist the jury in arriving at a just conclusion by explaining and commenting upon the evidence, by drawing their attention to the parts of same which he thinks important; and he may express his opinion upon the facts, provided he makes it clear to the jury that all matters of fact are submitted for their determination.”

There is no pretense in this case that the trial Judge did not time and time again emphasize to the jury that they were solely the judges of the facts, and that any opinion that he might have, or they might think that he had, relative to the guilt or innocence of the defendants, or either of them, was not in any way binding or controlling upon them.

ASSIGNMENT No. IX

The Court, in his instructions to the jury, gave first of all the law in regard to the case and then made certain comments on the evidence as presented, and the inferences to be drawn from the evidence. It is the duty of counsel for litigants on both sides, to inform the Court, either prior to the instructions being given, or at the conclusion thereof, as to any particular

point on which he desires the jury instructed. There is no pretense by attorneys for the appellants that they made a request for a certain definite instruction on the probative value of reputation testimony. The Court could have utterly ignored the testimony relative to the reputation, and the evidence of good reputation, introduced in the trial of the case by the appellants. Instead, he gave the following instruction:

“There has been evidence introduced in this case as to the good reputation, — that is, what people say as to the honesty or integrity of the defendants, — and you shall give such testimony that weight as you believe it entitled to receive in determining whether or not the defendants are guilty as charged.” (R. 279)

Counsel for the appellants objected, not to the instruction as given, but to the Court’s comment on the same, appellants’ objections being as follows:

“The Court went further and, by his instructions, wiped out all of the law of good reputation and honor, so far as the defendants are concerned, by his instruction that the jury could consider the reputation for what it is worth, but —as the jury knows, said the Court—people with good reputations are guilty and in this case so and so and so and so.” (R. 281).

If the appellants desired an instruction in accordance with what they claimed to be the law, they could at that time have so informed the Court, instead of

making a statement, "so and so and so and so." In view of the nature of the objection, the Court if it so desired could have completely ignored the same and allowed an exception.

However, the Court went further, and instructed the jury, in substance, that if in the light of all of the testimony, and in the light of the reputation testimony, they believed the defendants, or either of them, were not guilty, they had the right to base their verdict upon their interpretation of the testimony, together with the reputation testimony. And again appellants had the opportunity, if they so desired, to give the Court the benefit of what they considered proper instruction. This they utterly failed to do, or to point out to the Court just what part of the instruction they objected to.

But to show the absurdity of the present claim of the appellants, that by this instruction the Court was placing the burden of proof upon the defendants to establish the fact that they were not guilty, we find immediately following the giving of this instruction, the Court saying:

"But if not convinced by the evidence and the reasonable inferences of the evidence beyond all reasonable doubt of the guilt of the defendants, the jury cannot convict the defendants or either

of them upon suspicion, conjecture or surmise or prejudice.”

The Court had heretofore repeatedly instructed the jury that the defendants were, at all times and throughout all stages of the case, presumed to be innocent until they were proven guilty beyond a reasonable doubt; that this presumption continued throughout the trial and until the jury finds that the presumption has been overcome by the evidence, beyond a reasonable doubt. (R. 251).

And again:

“You are instructed that it is not the policy of the law that a verdict of guilty should be returned against anyone on trial for any crime unless such verdict is supported by the evidence beyond a reasonable doubt.” (R. 250).

Counsel for appellants in their brief admit that the Court probably intended to instruct in accordance with counsel's interpretation of the law, but object to the wording of the instruction. To say that this was prejudicial error, in face of no request, and no informing of the Court wherein the instruction was improper, is, of course, absurd.

CONCLUSION

The defendants were duly and regularly indicted. They had the benefit of a fair and impartial trial by a jury duly qualified. The trial Court listened patiently and ruled impartially. No prejudicial error having been committed in the trial, the conviction of the appellants herein, and each of them, should be affirmed.

Respectfully submitted,

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